TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]

PIEDMONT & GEORGES CREEK COAL COMPANY,
PETITIONER,

vs.

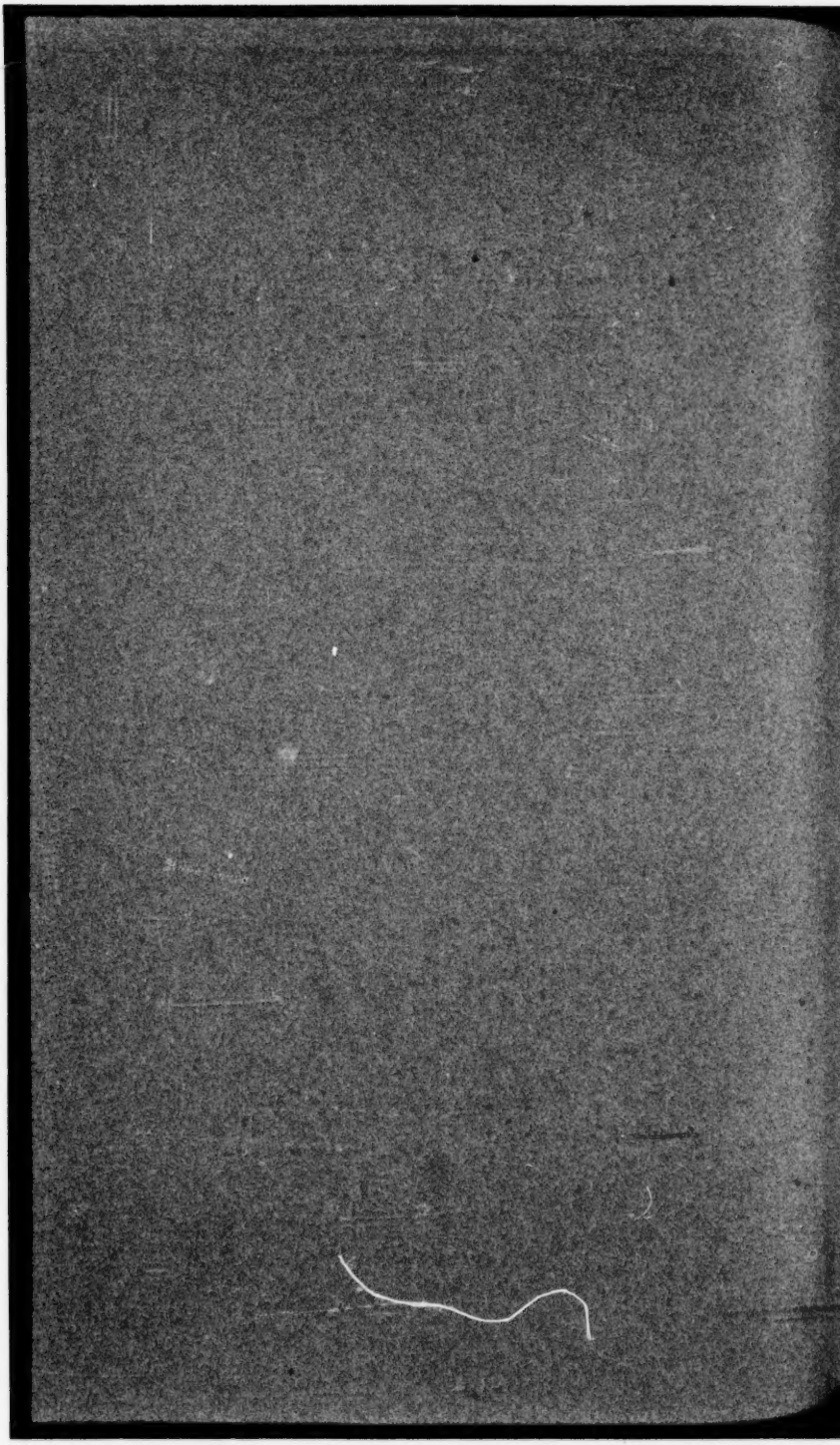
SEABOARD FISHERIES COMPANY, CLAIMANT, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1916.

CERTIORARI AND RETURN FILED NOVEMBER 15, 1916.

(26,761)



(26,761)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 675.

PIEDMONT & GEORGES CREEK COAL COMPANY, PETITIONER,

vs.

SEABOARD FISHERIES COMPANY, CLAIMANT, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1919.

a United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1327.

Fishing Steamers Walter Adams et al.
Seaboard Fisheries Company, Inc., Appellant,

v.

Piedmont & Georges Creek Coal Company, Appellee.

No. 1328.

Fishing Steamer Herbert N. Edwards.
Same v. Same.

No. 1329.

Fishing Steamer Rollin E. Mason.
Same v. Same.

No. 1330.

Fishing Steamer William B. Murray.
Same v. Same.

No. 1331.

Fishing Steamer Martin J. Marran.
Same v. Same.

No. 1332.

Fishing Steamer Amagansett.
Same v. Same.

Appeal from the District Court of the United States for the District of Rhode Island from Amended Final Decrees (Brown, J.), November 1, 1917.

Transcript of Record.

Charles R. Haslam, Gardner, Pirce & Thornley, for Appellants.
Frank Healy, Kirlin, Woolsey & Hickox, H. Brua Campbell, for Appellees.

1 United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1327.

FISHING STEAMERS WALTER ADAMS et al.
SEABOARD FISHERIES COMPANY, INC., Claimant, Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

District Court of the United States, District of Rhode Island. In Admiralty.

Admr. No. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

FISHING STEAMERS WALTER ADAMS, ALASKA, ARIZONA, GEORGE CURTISS, MONTAUK, QUICKSTEP, and RANGER, Their Engines, Boats, &c.

Libel.

(Filed June 16, 1915.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

The libel of the Piedmont & Georges Creek Coal Company against the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, in a cause of contract, civil and maritime, alleges as follows:

2 First. Respectfully shows the Libellant that it was at all times mentioned herein, and now is, a corporation under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. That at or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the said fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, and at this time it was indebted in a large sum to the Libellant for coal previously supplied during the season of 1913; that when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your Libellant refused to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account, and on information and belief, the Petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats, and unless coal had been furnished to it, it would have been unable to operate its said fishing

boats during the season of 1914. Accordingly, being desirous of obtaining coal from the Petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the Petitioner, in consideration of the sale, and delivery as requested to the Atlantic Phosphate & Oil Corporation of certain coal, during the months of May, June and July, 1914, for the use of its said steamers, to give maritime liens to the Petitioner on the several steam fishing boats abovenamed among others for all coal which was furnished by said Company for use on board the said steamers.

Third. In pursuance of this contract made by and between the Libellant and the Atlantic Phosphate & Oil Corporation, between May 19, 1914 and July 3rd, 1914, at the order and at the
3 request of the Atlantic Phosphate & Oil Corporation, the owner of the fishing steamers abovenamed, or of a person or persons by it duly authorized, the Libellant sold, delivered, furnished and supplied at Promised Land, Long Island, and at Tiverton, Rhode Island, to the Atlantic Phosphate & Oil Corporation for the use of the abovenamed steamers during the months of May, June and July, 1914, to-wit, upwards of 2,390 tons of coal of the reasonable and agreed value of to-wit, Three and 35/100 ($3.35) Dollars per ton, or Eight Thousand Six and 50/100 Dollars ($8006.50).

Fourth. That the coal so delivered and furnished as aforesaid to and for the use of the steamers aforesaid, was necessary for their use, and was actually used by them in their operation as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Fifth. By reason of the premises and by virtue of the Statute of the United States, and especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the Libellant had at the time said coal was delivered and furnished, and has since the said times, a good and valid maritime lien against the said steamers for the reasonable and agreed value of the coal so furnished for the amount used by each of them.

Sixth. The Libellant is not informed as to the specific amount used by each of the said vessels, and in respect to said amounts, asks that the Court order the Claimant of said vessels to answer the interrogatories hereto annexed.

Seventh. The fishing steamers above mentioned are now within this District, in the custody of the Marshal, and subject to the process of this Court.

4 Eighth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your Petitioner prays that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said fishing steamers, their engines, boilers, etc., and that all persons having any interest or claiming to have any interest therein be cited to appear and answer the matters alleged in this libel, and that a decree may be entered in favor of your Petitioner for the amount of said maritime lien against each of the said steamers, with interest, together

with costs and disbursements of Libellant in this action, and that said fishing steamers be condemned and sold to pay Libellant's claim as aforesaid, and that the Court will grant to the Libellant such other and further relief as the justice of the cause may require.

PIEDMONT & GEORGES CREEK COAL COMPANY,

(Signed) By FRANK HEALY,
Proctor.

STATE OF RHODE ISLAND,
Providence, sc:

Frank Healy, being duly sworn says:

I am Proctor for the Libellant named herein. The foregoing Libel is true of my own knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The source of my information and the reasons for my belief as to the matters not within my own knowledge, are statements by persons having knowledge of the matters mentioned in the libel.

(Signed) FRANK HEALY.

Subscribed and sworn to before me this 16th day of June, A. D. 1915.

(Signed) ROY O. NELSON,
Notary Public.

Let process issue as prayed.

ARTHUR L. BROWN, *J.*

June 18, 1915.

Interrogatories to the Claimant to be by Him Answered in Writing and Under Oath.

1. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914 by the fishing steamers owned or operated by said Atlantic Phosphate & Oil Corporation?

2. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Walter Adams?

3. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Walter Adams?

4. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Walter Adams from on or about May 19th until October 21st, 1914?

5. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Alaska?

6. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Alaska?

7. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Alaska from on or about May 19th until October 21st, 1914?

8. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker,
7 between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Arizona?

9. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Arizona?

10. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Arizona from on or about May 19th until October 21st, 1914?

11. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer George Curtiss?

12. Where, on what dates, and in what amounts was said — ing season of 1914, by the fishing steamer George Curtis?

13. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer George Curtiss from on or about May 19th until October 21st, 1914?

14. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal, and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Montauk?

8 15. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Montauk?

16. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Montauk from on or about May 19th until October 21st, 1914?

17. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, be-

tween May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Quickstep?

18. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Quickstep?

19. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Quickstep from on or about May 19th until October 21st, 1914?

20. How many tons of coal delivered by the Piedmont & Georges Creek Coal Company at Promised Land, Long Island, by the boat Harry Husted, the boat Crystal and the boat Rhode Island, and coal delivered at Tiverton, Rhode Island, by the boat H. Walker, between May 19, 1914, and July 3, 1914, was used during the fishing season of 1914, by the fishing steamer Ranger?

21. Where, on what dates, and in what amounts was said coal loaded on board said fishing steamer Ranger?

22. How much coal furnished by the Piedmont & Georges Creek Coal Company was used in operating the fishing steamer Ranger from on or about May 19th until October 21st, 1914?

9 *Libellant's Stipulation for Costs.*

(Filed in Consolidated Cause #1359, June 16, 1915.

District Court of the United States, District of Rhode Island.

Whereas a libel was filed in this court on the 16th day of June, A. D. 1915 by the Piedmont & Georges Creek Coal Company against the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger for the reasons and causes in the said libel mentioned and praying that the same may be consolidated in the answer, and the said libellant and Fidelity & Deposit Company of New York as surety hereby consent that in the case of default on the part of the libellant or Surety Company, execution may issue against their goods, chattels and lands for the sum of $250:

Now Therefore it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators shall be and are bound for the sum of $250 conditioned that the libellant above named shall pay all such costs as shall be awarded against it by this court, or in case of appeal by the Appellate Court.

(Signed) PIEDMONT & GEORGES CREEK COAL CO.
By FRANK HEALY,
Att'y.
FIDELITY & DEPOSIT COMPANY OF NEW YORK,
WM. B. GREENOUGH,
Att'y in Fact. [SEAL.]

Attest:
G. L. & H. J. GROSS,
General Agents,
By JAMES F. PHETTEPLACE.

10 *Stipulation Waiving Custody.*

(Filed in the consolidated cause #1359 June 22, 1915.)

Actual taking into custody of the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger is hereby waived, provided a claim be filed thereto, and a bond with good and sufficient surety in the sum of Nineteen Thousand Dollars, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as may be allowed to the Libellant, be filed herein.

FRANK HEALY,
Proctor for Libellants.

Claim by Seaboard Fisheries Co.

(Filed in the Consolidated Cause #1359.)

June 22, 1915.

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

And now appears Seaboard Fisheries Co., a corporation organized under the law of the State of New York, and states that it was and is the owner of said steamers "Walter Adams", "Alaska", "Arizona", "George Curtiss", "Montauk", "Quickstep" and "Ranger", and Seaboard Fisheries Co. appearing by William H. Thornley, its agent and attorney, claims the above named steamers "Walter
11 Adams", "Alaska", "Arizona", "George Curtis", "Montauk", "Quickstep" and "Ranger" and prays to defend this suit accordingly.

GARDNER, PRICE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for the Claimant.

DISTRICT OF RHODE ISLAND,
City and County of Providence:

William H. Thornley, being duly sworn, says that the Seaboard Fisheries Co. is the true and bona fide owner of the steamers "Walter Adams", "Alaska", "Arizona", "George Curtiss", "Montauk", "Quickstep" and "Ranger" against which this suit has been commenced by Piedmont & Georges Creek Coal Co., libellants; that no other person is the owner of said steamers; that for the purposes of this suit deponent is the agent of the owner and is duly authorized by said owner to put in its claim.

WILLIAM H. THORNLEY.

Sworn to, before me, this twenty-first day of June, A. D. 1914.

J. WESLEY BINNING,
Notary Public.

12 *Claimant's Stipulation to Abide by and Pay the Decree.*

(Filed in Consolidated Cause #1359,) July 23, 1915.

Whereas, certain intervening libels were filed on the 4th day of December, A. D. 1914, by the Piedmont & Georges Creek Coal Company against the fishing steamers William B. Murray, Martin J. Marran, Rollin E. Mason, Herbert N. Edwards and Amagansett, for the reasons and causes in the said intervening libels mentioned and set forth, and numbered as above set forth on the docket of this court; and

Whereas, a libel was filed on the 18th day of June, A. D. 1915, by said Piedmont & Georges Creek Coal Company against the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, for the reasons and causes in said libel mentioned; and numbered 1359 on the Admiralty Docket of said Court; and

Whereas, actual taking into custody of said fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger was waived as appears by stipulation on file, provided a claim be filed thereto and the bond in said stipulation mentioned; and

Whereas, all of said intervening libels were on the 22nd day of June, by order of the Court, consolidated with said Admiralty cause No. 1359, as appears by the Order of the Commission now on file in said causes, respectively; and

13 Whereas it is further provided in the Order of Consolidation in each of said intervening libels against the said William B. Murray, Rollin E. Mason, Herbert N. Edwards, Martin J. Marran and Amagansett that the stipulators on the Stipulation for value filed in said intervening cases, respectively, should be released and discharged from any liability under their said stipulation, upon filing in said consolidated cause a bond in the sum of Nineteen Thousand Dollars, with good and sufficient surety, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as might be allowed to the Libellant; and

Whereas, claim has been filed to said fishing steamers Walter Adams, Alaska, Arizona, George Curtis, Montauk, Quickstep and Ranger, named in said cause No. 1359, by the Seaboard Fisheries Company, a corporation organized under the laws of the State of New York, and the said Claimant and the said Equitable Surety Company, a corporation organized under the laws of the State of Missouri and having its principal place of business in the City of St. Louis in said State, its surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the Claimant or its surety, execution may issue against their goods, chattels and lands for the sum of Nineteen Thousand Dollars, together with interest from the day of the date hereof:

Now, Therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the stipulators undersigned,
14 are, and each of them is bound in the sum of Nineteen Thousand Dollars, together with interest from this date; conditioned that the Claimant abide by and perform all of the orders of the Court, interlocutory or final, and pay the amount of the judgment awarded by the final decree rendered in said consolidated cause by this Court, and in each and every one of said intervening libels consolidated as aforesaid, rendered by this Court, or in case of appeal by the Appellate Court.

(Sgd.) SEABOARD FISHERIES CO.,
By GARDNER, PIRCE & THORNLEY,
WM. H. THORNLEY,
Proctors for Assignees of
Claimants Seaboard Fisheries Co.
EQUITABLE SURETY COMPANY,
By WILLIAM M. P. BOWEN,
Attorney in Fact.

Assented to:
FRANK HEALY,
Proctor for Libellant.

15 *Answer of Seaboard Fisheries Company.*

(Filed in Consolidated Cause #1359,) July 9, 1915.

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

Seaboard Fisheries Co., a corporation organized under the laws of the State of New York and having its place of business in the City of New York in said State, the claimant of the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger as the same are proceeded against on the libel of Piedmont & Georges Creek Coal Company in a cause of contract, civil and maritime, answers said libel and complaint as follows:

First. It admits the allegations of Article First of said libel.

Second. It admits the allegation of Article Second of said libel, that the Atlantic Phosphate & Oil Corporation, hereinafter called "said corporation", was the owner of the fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, and further admits that said corporation was indebted on an open account to said libelant, but upon information and belief it denies each and every other allegation contained therein.

Third. Upon information and belief it denies the allegation of Article Third of said libel, that coal was furnished to the Atlantic Phosphate & Oil Corporation in pursuance of the contract as stated or that coal was furnished solely for the use of the said vessels,
16 but admits that coal was furnished to said corporation at the time and in the amount stated and alleges that it was so furnished for its general purposes and not solely for the use of said vessels, and it further denies upon information and belief that the

reasonable and agreed value of said coal was as stated in said Article Third of said libel.

Fourth. Upon information and belief it admits the allegation of Article Fourth, that coal so delivered and furnished was used by said corporation in the operation of its fishing fleet but alleges that only part of the coal was so used and that it is impossible to determine which part of said coal was so used, and denies that the said coal was furnished to and for the use of the said steamers but alleges that it was furnished to said corporation for its general purposes and put into its stock in hand and when used by said steamers was withdrawn from the stock of coal then on hand in the possession of said corporation.

Fifth. It denies the allegation of Article Fifth of said libel.

Sixth. As requested in Article Sixth of said libel, the claimant will inform the Court as to the specific amounts used by each of said vessels and withdrawn from the general stock of coal owned by the said corporation.

Seventh. It admits the allegation of Article Seventh of said libel.

Eighth. It admits that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but denies upon information and belief that all and singular the premises as stated in said libel are true.

17 Ninth. Further answering said libel, the claimant alleges upon information and belief that the coal mentioned in said libel was billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libellant called at the office of said corporation and introduced or procured the agents or employees of said corporation, without authority from said corporation, to alter the bills for said coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to five steamers not included within this libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of any steamers or for delivery to any steamers.

The claimant further alleges upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars ($2020.02) due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft to Proctor & Gamble in the sum of Two Thousand Dollars ($2,000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof

18 was not credited on the open account but was credited on the

said notes secured by mortgage bonds heretofore referred to.

Tenth. Further answering said libel the claimant alleges:

That all of the vessels included within this libel were described in and subject to a certain mortgage or deed of trust given by the Atlantic Phosphate & Oil Corporation to the Astor Trust Co. as Trustee, known as the refunding Gold Bond Mortgage of the Atlantic Phosphate & Oil Corporation, bearing date July 1, 1913.

That on the Twenty-ninth day of December, 1914, a bill of complaint praying for a foreclosure of and sale under said mortgage was filed in this Court by the Astor Trust Co. as Trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation et als, Defendants, said cause appearing on the files of this Court as Equity No. 45, that said cause was thereafter consolidated with and now appears on the files of this Court as "Waldemar Schmidtmann, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44."

That thereafter on the eighth day of March, 1915, a decree of foreclosure and sale under said mortgage was entered in the above entitled consolidated cause, and subject to the provisions thereof all of the vessels included within the above libel and subject to said mortgage as aforesaid were sold at public auction on the twenty-fourth day of April, 1915, by the Receivers of the Atlantic Phosphate & Oil Corporation, acting as Special Masters under and by virtue of said decree; that said vessels were purchased at said sale by J. Treadwell Bullwinkle, acting for and on behalf of the Seaboard Fisheries Co., a corporation organized under the laws of the State of New York and having an office in the Borough of Man-
19 hattan in the City and State of New York, the said Seaboard Fisheries Co. being the claimant herein; that the said vessels were conveyed and transferred by said Special Masters to said Seaboard Fisheries Co. by separate bills of sale dated May 29, 1915.

That therefore, and long prior to the sale and purchase of said vessels as herein set forth, to wit, on the fourth day of December, 1914, the said libelant had filed intervening libels in this Court against five other vessels formerly owned by said corporation, namely, Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray, alleging that it had a maritime lien against said five vessels for certain shipments of coal, which shipments, claimant alleges, include the coal referred to in this libel. The said libelant alleged in said five intervening libels that the said coal was delivered to said corporation solely on the credit of the said five vessels and was delivered to the said five vessels, as will appear by the intervening libels filed against said five vessels, which causes have been consolidated with this cause and are a part of the record herein and are hereby referred to for all purposes.

The claimant alleges, therefore, that the said libellant had elected to claim a lien upon the said five vessels not included within this libel and has not revoked such election but on the contrary has gone to a hearing thereon before this Court, nor did the said libelant file this libel or claim against the vessels named herein until long after the purchase of said vessels at public auction by said claimant although

it, the said libelant, had full knowledge of the proposed sale of said vessels and that therefore said libelant should not be allowed to recover herein.

The said claimant claims the benefit of the foregoing al-
20 legations by way of an exception as well as by way of answer to said libel.

Eleventh. That all and singular the premises are true.

Wherefore the claimant prays that said libel may be dismissed with costs.

SEABOARD FISHERIES CO.,
By GARDNER, PIRCE & THORNLEY,
WM. H. THORNLEY,
Proctor.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says: I am a member of the firm of Gardner, Pirce & Thornley, proctors for the claimant herein; the foregoing answer is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation and of the Receivers thereof and of the said claimant.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of July, A. D. 1915.

J. WESLEY BINNING,
Notary Public.

21 District Court of the United States of America, District of Rhode Island, Providence, R. I., June 14, 1915.

In Admiralty. No. 1334.

BENJAMIN MARCHANT et al., Libellants,

vs.

FISHING STEAMER "HERBERT N. EDWARDS," Libellee.

Before Brown, Judge.

(Filed in the Consolidated Cause No. 1359.)

Appearances:

For the Libellants, Convers & Kirlin, Esqs., John M. Woolsey, Esq.; H. B. Campbell, Esq.; Frank Healy, Esq., of counsel.
For the Libellees, Gardner, Pirce & Thornley, Esqs., P. S. Collette, Esq.

Evidence for Libellant.

By the Court: Numbers 1336, 1333, 1334, 1329 and 1327—all the cases to be heard together—involving the same questions?

22 Mr. Woolsey: Yes.

By the Court: There are no questions of fact?

Mr. Woolsey: We have testimony to present.

By the Court: And the same counsel appear in all cases?

Mr. Healey: Yes, sir.

Mr. Woolsey: These five libels are brought for the value of coal furnished to the Atlantic Phosphate & Oil Corporation during the fishing season of 1914. The situation was that at the beginning of that season the Atlantic Corporation, being in difficulties and not having been able to discharge a coal bill that it owed to the libellant for the previous year or get any credit for coal, suggested to my client, the Piedmont & Georges Creek Coal Company, that they should furnish coal to the Atlantic Phosphate & Oil Company on the credit of a maritime lien against their entire fishing fleet, and offered as security for the coal to be furnished a maritime lien on their entire fleet. It was solely on the credit of this agreement that the coal was shipped partly to Promised Land, a small town on the southern coast of Long Island, and partly to Tiverton, R. I., and thereafter, when the company was unable to discharge these maritime liens, and pay my client, in order not to tie up the entire fleet, and by agreement between the parties, the particular boats here mentioned were held bound to the lien and the other liens against the other boats were not pressed, and so we come here on an agreement for maritime liens as security for coal furnished to this fishing fleet, to be specifically enforced against these five vessels, all the vessels hav-

ing been bound by the agreement. That is the situation, as I understand it. There are practically no contraverted questions of fact at all.

23 By the Court: Do I understand that these libels are not for coal furnished to particular vessels?

Mr. Woolsey: As far as the coal went to the particular vessels, just how much we shall have to prove—we have witnesses here to prove that some of the coal, at least, went to these particular vessels. It was all furnished on a general agreement to give us a maritime lien on all the vessels of the fleet in consideration of our furnishing coal for their use, the use of the company.

By the Court (to Claimant's Counsel): Have you any statement to make in regard to the issue?

Mr. Gardner: The suggestion that there are no controverted questions of fact, I think, is hardly warranted. There are facts which have a bearing upon the case which we shall undoubtedly want to present evidence upon and hear evidence upon, if it is desirable at this time, and if so, to state our position and to make the subsequent proceedings a little more clear, we represent, as claimants here, Mr. Oeland and Mr. Cox, who are ancillary receivers in this district for the Atlantic Phosphate & Oil Company, and who are receivers in the suit of the Astor Trust Company, Mortgagee in Trust under a mortgage covering these vessels against which it is sought to establish a lien, and those two suits have been consolidated. All the facts, I presume, with reference to those matters that have a bearing upon this case are before the Court.

By the Court: A mortgage preceding any lien?

Mr. Gardner: Our mortgage preceding any agreement for lien whatever, and our position would be there has been no coal furnished to these steamers which it is sought to libel; that the coal had all been furnished to the Atlantic Phosphate & Oil Company and having been so furnished was used in part for the running of the different plants at Promised Land and at Tiverton, and in part

24 for those vessels, and in part for other vessels making up the fleet of the company. The controverted questions of fact, I presume, would be as to the special agreement which was claimed to have been made. We should hold that even though the facts were as claimed by the libellant there was, as a matter of law, no lien upon these vessels, but subject to the questions of law there are certain facts here which ought to be established.

By the Court: The question of a lien, a maritime lien, on a fleet, as distinguished from a lien on vessels to which coal was furnished directly, is a new one.

Mr. Woolsey: I think it is not entirely a novel question. There has been a number of decisions and it is universally held, I believe, that the owner of vessels may pledge them by way of maritime liens for anything that he desires and after having done that he is estopped to deny the lien.

By the Court: The point is whether it would apply to the fleet. We have had no such question in this jurisdiction. So far as there

was a subsequent agreement, a particular agreement, and in pursuance of that agreement certain things were done, that would be one question, but whether it is not essential, in order that there be a maritime lien, there should be supplies actually furnished to the specific vessels, I would like to be enlightened by counsel on that point as it is a new one to me in this jurisdiction.

Mr. Woolsey: I think we have authorities, sir, that will satisfy you that that is a regular procedure which is often resorted to.

By the Court: I think we have had, in the court of appeals, some agreements of that kind, but the specific question which arises in this case I do not think was ever before this court.

25 Mr. Woolsey: I was not able to find any case where it has ever been before this court. Shall I call my witnesses?

By the Court: If you please.

THOMAS C. MEADOWS is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Meadows, what is your present place of residence?

Ans. Near Bating Hollow, Long Island.

Q. 2. What are you engaged in doing now?

Ans. I am managing vessels, fishing vessels and directing the Fishing Globe, New York.

Q. 3. The Globe newspaper?

Ans. Yes, sir.

Q. 4. What was your position in January and February 1914?

Ans. I was manager of the Atlantic Phosphate & Oil Corporation.

Q. 5. How long had you been active manager of that concern?

Ans. Most active since the previous August, but more or less active for two or three years previous to that.

Q. 6. Had you had dealings with the Piedmont & Georges Creek Coal Company in the year 1913?

Ans. I had.

Q. 7. In that connection did you meet Mr. Bohannon?

Ans. I did.

26 Q. 8. What was the situation as to the account of the Piedmont & Georges Creek Coal Company in February, 1914?

Ans. There was an unpaid balance of several thousand dollars which had been settled by a note some time in the summer of 1914, secured by bonds of the Atlantic Phosphate & Oil Corporation.

Q. 9. What was the actual condition of the Atlantic Phosphate & Oil Corporation in February 1914?

Ans. It was in the position of having approximately $75,000 or $100,000 of the accounts of the previous year unpaid, which they were unable to pay.

Q. 10. Was it practically ripe for a receivership at that time?

Ans. The receivership papers had been prepared by the attorneys of the Atlantic Phosphate & Oil Corporation in the fall of 1913 and some of the creditors had been urged to bring receivership proceedings, but hadn't done so.

Q. 11. So you were practically living on your creditors in 1914?
Ans. At the sufferance of them.
Q. 12. Was it necessary for you to have coal to run your operations during 1914?
Ans. It was.
Q. 13. How many vessels did you have?
Ans. We had, I believe 19 all told.
Q. 14. What proportion of those vessels were coal consuming vessels?
Ans. All of them—all of the 19.
Q. 15. Did Mr. Bohannon call on you any time during February 1914, in an attempt either to collect this balance or make some working arrangements with you in regard to it?
Ans. He called regarding his account. I endeavored to make an arrangement with him for coal for the succeeding season.
27 Q. 16. Did you take up the question of coal for the season of 1914?
Ans. I did.
Q. 17. What did you offer him with regard to that coal, in your first proposition?
Ans. I told him that the company still had some of the bonds in its treasury such as had been pledged to secure his previous year's account, and on purchases for the year 1914 if he would be satisfied with those bonds as collateral we could give them as security.
Q. 18. What was Mr. Bohannon's reply to you? Did he have to refer back to some one?
Ans. He said he would refer it to Mr. Brophy, the president of the company.
Q. 19. Did you afterwards see Mr. Bohannon?
Ans. Yes. Mr. Bohannon returned some two weeks later, I think, and reported Mr. Brophy was not willing to make a contract based on the bonds as the only security.
Q. 20. What further transpired?
Ans. I told him, as I understood the law, that we had a perfect right to use the credit of the steamers in the acquisition of coal and if he would be willing to furnish coal we would be perfectly willing that he hold and maintain a maritime lien on the steamers.
Q. 21. Was that of the entire fleet?
Ans. Yes; on all the boats.
Q. 22. Well, what happened thereafter?
Ans. He referred that to Mr. Brophy and Mr. Brophy accepted the proposition on that basis.
Q. 23. That was a maritime lien on your entire fleet should be security on which he was to furnish coal?
Ans. Yes.
Q. 24. That was your understanding of it?
Ans. That was my understanding of it.

28 By the Court: Any written agreement?
Mr. Woolsey: No, sir; there wasn't any written agreement.

There were some letters exchanged which subsequently showed how the matter stood and in respect to one or two of the cargoes there was a written agreement.

Q. 25. Now, Mr. Meadows, was coal subsequently furnished to you in pursuance of this agreement?

Ans. Yes.

Q. 26. Can you state when it was furnished?

Ans. By looking at my orders—there were 9 cargoes all told, as I recall it.

Q. 27. There were 9 cargoes all told?

Ans. Yes, sir.

Q. 28. Will you look at these documents which I hand you and state whether those are your orders under which the coal was delivered?

Ans. I see there is only 8 here—yes; here is 9. There are 9 invoices, I think.

Q. 29. Nine invoices and 8 orders shown there?

Ans. That is right.

Mr. Woolsey: Apparently we have not got a copy of the other order—have you got a copy of the last order?

Mr. Thornley: There are five orders involved in this suit.

Mr. Woolsey: That is one of them. I thought we had a carbon copy of it. We can just put it in to make a complete file, if you don't mind.

The Witness: Those are the orders.

Mr. Woolsey: I should like to have those nine orders marked in evidence as our exhibits.

29 (The orders referred to are marked collectively "Exhibit 1".)

Q. 30. Now, Mr. Meadows, it was the understanding between you and the Piedmont and Georges Creek Coal Company that all the coal furnished under those orders should constitute a maritime lien against the vessels.

Ans. That was our agreement.

Q. 31. Were there any payments made on any of these orders?

Ans. There were two—two of the shipments were paid for.

Mr. Woolsey: Can't we agree that cash was paid in respect to the order on the Crystal for 1068 tons, $3524.40, the third and fourth shipments.

The Witness: I can testify to that if you want me to.

Q. 32. Did you pay for a third shipment on the Barge—Crystal?

Ans. The third and fourth cargoes—the third and fourth cargo shipped in pursuance of this arrangement were paid for.

Q. 33. In full?

Ans. In full.

Q. 34. The first two cargoes on the Barge Crystal and the R. E. Mason—will you state what was done in regard to that?

Ans. There were notes given with bonds attached as collateral.

Q. 35. Where were those notes given and where were the bonds attached?

30 Ans. We were able to get a little better terms as the bills would not come due so early by giving papers that they could use at their banks.

Q. 36. In other words, in your "giving them paper that they could negotiate, they were willing to allow the time to be extended within which payment should be made?

Ans. Yes.

Q. 37. That was in respect to the first two cargoes?

Ans. Yes.

Q. 38. Now, as to the last five cargoes, that is, on the Harry Husted, on the Crystal, the Rhode Island and the H. Walker, and the Rhode Island a second time, will you state what was done in regard to those?

Ans. Those were deliveries, shipment made along in the month of May with the specific dates for cash settlement stipulated in, no collateral given, nor no notes.

Q. 39. What subsequently happened in regard to these five notes, were they ever paid?

Ans. They were not.

Q. 40. Did the Atlantic Phosphate & Oil Company, at the time when you made this agreement for the Maritime lien in consideration of the coal being furnished, own the boats—Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray?

Ans. They did.

Q. 41. Were they among the 19 boats you mentioned?

Ans. They were.

Q. 42. Were those five boats among the boats which were pledged by your agreement by way of a maritime lien for the coal furnished?

Ans. They were considered the best of the 19.

Q. 43. Were they all included in that pledge of maritime lien?

Ans. They were.

31 Q. 44. Now, subsequently did you have any correspondence or any conversation with Mr. Bohannon or Mr. Brophy with regard to impressing the liens which you had agreed for on these five boats?

Ans. Yes. When the bills came due and we had given them one or two checks which we were unable to make good, Mr. Brophy came over to force collection, at least, that is what he stated, and to establish,—to bring action under his liens we had on the boats, and at our earnest solicitation we prevailed upon him not to enforce his lien at that time. He agreed to hold the matter in abeyance for a few days, and did permit it to string along a little while.

Q. 45. Then what happened?

Ans. Well, finally, he did string it along until finally the receivership happened and then he started to enforce his action and enforce his liens on the boats, in the meantime, however, we were arranging for an extension. He had been threatening to tie up the whole fleet. I prevailed upon him to exclude from his actions he was threatening to bring as many of the boats as he was willing to exclude so that we might have something to operate with even though he tied up part of the fleet. It was at my solicitation that he selected the five best boats as ample security for his claim—in case he would bring action for his collection he would not tie up the other.

Q. 46. What was done in regard to making a record of the selection of these five boats as the boats against which the liens were to be impressed?

Ans. There was letters exchanged in which we specifically recognize our obligation and our agreement with these gentlemen that prior liens did exist, and those were selected as five boats that the liens should be enforced against if he saw fit to bring action, and in that letter there was some approximate statement as to the total
32 amount of other liens that existed against these five boats.

Mr. Woolsey: Have you got the letter of September 11, our original letter, to the Atlantic Phosphate & Oil Company?

Mr. Thornley: Yes, sir.

Mr. Woolsey: May I have that? I will give you a copy in return. And there are also one or two other letters, Mr. Thornley—the letter of June 26th, the letter of July 15th.

Q. 47. Had you seen Mr. Brophy at New York prior to his writing you the letter in September, that you speak of?

Ans. Yes; I think he had been there.

Q. 48. Well, had there been any record made on your books as to the boats to be chargeable for these liens, the boats against which the liens were to be impressed?

Ans. There had been no singling out of vessels, nothing except the entire fleet had been referred to prior to his visit.

Q. 49. Then, what was done in regard to making a record as to these five boats against which the proceedings were to be enforced?

Ans. Well, following his conference it was agreed that he should have his invoices billed, one invoice against one of the five new boats which we recognized as the best boats.

Q. 50. Will you tell the Judge what happened, how this was done?

Ans. Mr. Bohannon came to the office with the invoices made out as Mr. Brophy and I had agreed they should be made out.

33 Q. 51. In the same proportion as contained in these libels?

Ans. Yes; just as they are in the libels. When we came to substitute them for the existing invoices which had already been rendered we found on the existing invoices the bookkeeper's notations, the stamps with the "O. K." with the different initials on them, and we realized that an effort would have to be made to reproduce those, but instead of doing that the bill heads were simply torn out and pasted to the original invoices.

Q. 52. Do you remember the date of this?

Ans. I think it was either the early part of September or the end of August.

Q. 53. Here is a letter of September 11, 1914. Did you receive that?

Ans. Yes.

Q. 54. And were you, at that time, vice-president of the company?

Ans. I was.

Q. 55. Did you reply in accordance with this letter on September 15th?

Ans. Yes. That is my reply.

Mr. Woolsey: I would like to have these marked in evidence as Exhibits 2 and 3—"Exhibit 2" is the letter of September 11th; and "Exhibit 3" is the reply.

Q. 56. By whom was this change in the invoice made?

Ans. It was made by us.

Q. 57. Made by you?

Ans. Yes.

Q. 58. And was the making of that in pursuance of the prior agreement with regard to the maritime lien?

34 Ans. Pursuant to that, and picking out five vessels instead of the lien continuing against the whole set of 19.

Mr. Woolsey: That is all.

Cross-examination by Mr. Gardner:

C. Q. 59. Mr. Meadows, I understood you to state that at the close of the year 1913, and in the month of February, 1914, the Atlantic Company, of which you were an officer, had some $75,000 of unpaid accounts outstanding which you were unable to discharge?

Ans. Those were the current accounts. They had a good deal more indebtedness than that.

C. Q. 60. And it was on the verge of a receivership?

Ans. Yes.

C. Q. 61. And so recognized?

Ans. Yes.

C. Q. 62. And that receivership papers had actually been prepared?

Ans. That is my understanding.

C. Q. 63. These facts were communicated by you to the officers of the Piedmont Company at the time of your first interview with them?

Ans. Yes. They knew it.

C. Q. 64. And is it also true, Mr. Meadows, that at the date mentioned the Trust Mortgage to the Astor Trust Company, covering the five boats, the vessels which it is here sought to libel, and other vessels of the company, was in existence and outstanding?

Ans. Yes, sir.

C. Q. 65. Now, can you fix definitely at all the date of your first interview with Mr. Bohannon with reference to their furnishing coal for the season of 1914?

35 Ans. It was the first half of February, I think.

C. Q. 66. Early in February?

Ans. Yes.

C. Q. 67. And at that time arrangements were made for the supply which your company would need for the season?

Ans. No. A proposition was made which, as I have testified, Mr. Brophy would not accept, and then in March, I think, the arrangements were finally consummated.

C. Q. 68. The matter was taken up by the Piedmont Company to supply your company with all the coal they might need for the season of 1914?

Ans. That is right.

C. Q. 69. And your company, as I understand it, had plants at Promised Land and at Tiverton?

Ans. Yes.

C. Q. 70. And certain of this coal was used in those plants?

Ans. Yes, sir.

C. Q. 71. And certain of the coal was used for the entire coal consuming fleet of the company?

Ans. That is right.

C. Q. 72. Which amounted to some 19 vessels?

Ans. That is the total fleet, I think there were only 17 or 18 in actual operation.

C. Q. 73. Now, at that time, if I understand you correctly, you said that an offer was made to Mr. Bohannon to pay for this coal which they might furnish with notes of the company secured by its bonds?

Ans. That is the first proposition made.

C. Q. 74. That is the first proposition?

Ans. Yes.

C. Q. 75. And that he desired to consult Mr. Brophy in reference to that?

Ans. Yes.

36 C. Q. 76. And he subsequently returned and told you that Mr. Brophy was not satisfied with that arrangement?

Ans. That is right.

C. Q. 77. But nevertheless, as a matter of fact, you did pay for the first cargo which was shipped to you in 1914 by the giving of your notes and bonds to secure them, did you not?

Ans. But with a memorandum stating that the lien was also retained.

C. Q. 78. As a matter of fact, you gave your notes and bonds securing the notes?

Ans. We did.

C. Q. 79. In payment of the first cargo?

Ans. First two.

C. Q. 80. And those first notes given for those first two cargoes were subsequently paid?

Ans. No.

C. Q. 81. They are outstanding still?

Ans. Still outstanding.

C. Q. 82. Now, you say a memorandum was made at that time of the arrangement with reference to furnishing and payment for these cargoes?

Ans. Yes; payment of the first cargo, this was a memorandum.

C. Q. 83. Is that (indicates) the memorandum to which you refer in your testimony?

Ans. Yes; this is it.

Mr. Gardner: I would like to have this marked for identification, your Honor please.

C. Q. 84. Now, after the first and second cargoes were furnished and paid for by notes, as you have stated, the third and fourth cargoes were also furnished?

37 Ans. They were furnished, yes.

C. Q. 85. Now, was it prior to the furnishing of the third and fourth cargoes that the arrangement was made as to which you have testified as to the times when payments should be made?

Ans. Yes. There was specific settlement dates of those two cargoes.

C. Q. 86. Of those two cargoes alone?

Ans. On every cargo subsequent.

C. Q. 87. On every subsequent cargo?

Ans. Yes.

C. Q. 88. After the first and second cargoes had been furnished an agreement was made as to certain payments to be made covering all the rest of the shipments?

Ans. Exactly.

C. Q. 89. And the shipments made by the third and fourth cargoes were paid for in cash in accordance with the terms of that arrangement?

Ans. Approximately, I believe they may have been a day or two past due, something of that kind, but they were paid in full, in cash.

C. Q. 90. That is the third and fourth?

Ans. Third and fourth.

C. Q. 91. Then the balance which became due as the last five cargoes were subsequent, the fixed payments were not made?

Ans. They were not.

C. Q. 92. And then Mr. Bohannon came to see you, to see what arrangement was to be made to secure them?

Ans. No. He came to see me most every day to get his checks. Sometimes he got them, sometimes they were not paid. They were not secured though at all.

C. Q. 93. At some time, as you have testified, an arrange-

38 ment was made whereby security was given or sought to be given to them, upon those five vessels which are here sought to be libelled?

Ans. Yes. That was prior to the shipment of the cargo.

C. Q. 94. Prior to the shipment?

Ans. In each instance.

C. Q. 95. Well, was such an arrangement made prior to the shipment of the third and fourth cargo?

Ans. Yes.

C. Q. 96. With these five vessels—the Edwards and the others—were picked out——

Ans. The entire fleet was pledged, the lien was held——

Mr. Woolsey: Mr. Gardner, I may suggest Mr. Meadows doesn't understand. You were talking about singling out those five vessels.

Mr. Gardner: I understood Mr. Meadows to state that almost at the inception of the proceeding it was agreed generally that the Piedmont Company should have a maritime lien upon the vessels of your company.

The Witness: Not generally.

C. Q. 97. But that no specific vessels were picked out.

Ans. It was agreed specifically they should have a lien on the vessels that would operate consuming coal.

C. Q. 98. On all the vessels?

Ans. That was an agreement made at the time the coal was arranged for.

C. Q. 99. Now, when the payments which became due were not met I understood you to state you had an interview with Mr. Bohannon as the result of which certain vessels were selected?

Ans. No. I had a conference, other conferences with Mr. Bohannon, but it was when Mr. Brophy finally, the president of
39 the company, who came over, after special conferences with Mr. Bohannon came over and was proceeding to tie up the entire fleet. He was going to bring proceedings under his maritime lien to tie up the entire fleet. As a result of my conference with Mr. Brophy it was agreed that five of the best boats should be singled out for him to tie up and he would not enforce his liens on the remainder.

C. Q. 100. Exactly: Now at this conversation with Mr. Brophy was Mr. Bohannon also present?

Ans. Yes.

C. Q. 101. He made the threat, as I understand it, or announced his intention to institute proceedings to enforce a maritime lien against all your vessels?

Ans. Yes. It was not a threat.

C. Q. 102. He announced his intention?

Ans. Yes.

C. Q. 103. He hadn't instituted any proceedings?

Ans. Not up to that time.

C. Q. 104. And at that time all the coal which was furnished to you during the year 1914 had been furnished?

Ans. All that had been furnished by the Piedmont Company.

C. Q. 105. All that had been furnished by the Piedmont Company had been furnished?

Ans. No; I don't think that is true. I think we purchased some from them even as late as October but we paid for it cash.

C. Q. 106. All the coal which is covered by this proceeding here?

Ans. Yes.

C. Q. 107. For which payment is sought to be made here, your lien is sought to be obtained?

Ans. Yes.

C. Q. 108. And that had been furnished at that time?

40 Ans. It had.

C. Q. 109. And up to that time your agreement with the Piedmont Company had been that they should have a lien upon your vessels generally?

Ans. Upon all the vessels.

C. Q. 110. Up to that time no special vessels had been mentioned?

Ans. Yes; each had been mentioned.

C. Q. 111. Each of the 19?

Ans. Each of the 17.

C. Q. 112. But none had been picked out to be made the subject matter of the lien?

Ans. Yes; they had all been picked out. The only difference as we say absolutely, the only difference that resulted from Mr. Brophy's conference was that we induced him to bring his action against 5 boats instead of against the 17.

C. Q. 113. And those five were first mentioned and made during the course of these negotiations after the coal had all been furnished?

Ans. No. They had been named as part of the 17.

C. Q. 114. But they had been picked out and set aside as the subject matter of a lien after this coal had been furnished?

Ans. I can't say that the situation with reference to the five boats had been changed at all as a result of that conference. It is only the 12 that were excluded as a result of that conference.

C. Q. 115. At any rate the names of those boats were first mentioned at that time?

Ans. No, sir; that is not true.

C. Q. 116. The names of those boats subject to the lien were first mentioned at that time?

Ans. That is not true.

41 C. Q. 117. The names of those boats as the only boats to be made subject to the lien were first mentioned at that time?

Ans. The names of the other 12 boats were first excluded at that time.

C. Q. 118. Well, put it that way: Now during those negotiations and as preparatory to the selection of the vessels upon which a lien was to be established, did Mr. Brophy or Mr. Bohannon go with you to Promised Land?

Ans. Yes.

C. Q. 119. Did they there look over your plant?

Ans. They did.

C. Q. 120. Including these vessels?

Ans. Yes.

C. Q. 121. Did you, at that time, show them a report of the American Appraisal Company as to the value of your assets?

Ans. Not at Promised Land; they had seen that months before, I think.

C. Q. 122. But after the return from Promised Land?

Ans. I don't know.

C. Q. 123. At any time during the course of these negotiations they saw and read the appraisal report?

Ans. I don't know whether it was before or after.

C. Q. 124. And they picked out those five boats as being the most valuable of your fleet?

Ans. I think they took my word for that.

C. Q. 125. You told them that?

Ans. Yes.

C. Q. 126. But they did examine the report of the Appraisal Company?

Ans. They saw it.

C. Q. 127. In that report the value of these boats was given?

Ans. It was.

C. Q. 128. Now, prior to that time you, of course, had re-
42 ceived invoices for the five cargoes for which a lien is now sought?

Ans. That is right.

C. Q. 129. And how were those invoices, when they came to you, made—to whom?

Ans. The Atlantic Phosphate & Oil Corporation.

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Are not the orders in?

Mr. Woolsey: The orders are in but not the invoices, but I object to the question of how they were billed as being irrelevant and immaterial on the question of the liens.

Mr. Gardner: As a matter of fact, as the witness has already testified, your Honor, please, after this arrangement was made where the five vessels were selected as being the subject matter of the lien, the invoices which they had received were changed—the top of them was torn off—and we wish to show in what condition they were when they originally reached this company.

By the Court: You may inquire.

C. Q. 130. (By Mr. Gardner:) You have already stated, I think, that they were made out to the Atlantic Phosphate & Oil Corporation?

Ans. Yes, sir.

C. Q. 131. And no vessel was named anywhere in those invoices?

Ans. No. It simply said "as per agreement."

C. Q. 132. "As per agreement"?

Ans. Yes.

43 C. Q. 133. Now, when those vessels were selected by the officers of the Piedmont Company as the subject matter of these liens were the headings of these five invoices torn off or removed and other headings substituted?

Ans. Yes, sir; we did that.

C. Q. 134. Now, I show you the invoice of the shipment of May 19, 1914, for coal loaded in the boat Harry Husted, Port Reading, New Jersey, with papers accompanying the order and the acceptance, and ask you whether that invoice as originally received by you was made out simply to the Atlantic Phosphate & Oil Corporation?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

Ans. Yes, sir.

C. Q. 135. (By Mr. Gardner:) And you say that there was also added to the name of your company the words "as per agreement"?

Ans. My recollection is that it was on the invoice, I don't know whether it was here or there (indicates). My recollection was that it appeared on the invoice but I won't swear to that.

C. Q. 136. Were those uniform?

Ans. Yes.

C. Q. 137. I show you invoice of the shipment made May 12th, which you testified has been paid for, and ask you if there is any mention as to the "as per agreement" on that?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

44 Ans. There is not.

C. Q. 138. (By Mr. Gardner:) Was not the invoice of May 19th, as it originally came to you, made out simply to Messrs. Atlantic Phosphate & Oil Corporation, 165 Broadway, New York City, as the invoice of May 12th, 1914, was made out?

Ans. Possibly.

Mr. Woolsey: May I take an objection on the same ground? I don't want to interrupt the proceeding if I may reserve an objection generally.

By the Court: State your general objection.

Mr. Woolsey: My general objection is irrelevancy and immateriality as to what form these bills were sent. He has testified to the agreement for a maritime lien, and it is immaterial whether they were billed against one boat, or not, it is immaterial.

By the Court: You mean, from your point of view.

Mr. Woolsey: From my point of view it is purely a matter of bookkeeping and under the lien law——

By the Court: I think it is very material.

Mr. Woolsey: May I have my objection general?

By the Court: Yes.

C. Q. 139. (By Mr. Gardner:) And that invoice of May 19th, as it now stands, is made out against Steamer Herbert N. Edwards, and Owners, is it not?

Ans. Yes, sir.

C. Q. 140. And this change in the invoice was made at the time this plan for establishing a lien was under discussion—it was made

by tearing off the original invoice and pasting on in place of that torn off another and different heading?

45 Ans. No. There were new invoices entirely prepared and submitted and asked to be substituted or suggested that it should be submitted for the one we had on our records—the account record of the office and the invoices—that was not followed.

C. Q. 141. And the plan that was followed was removing the heading and substituting another heading?

Ans. That is quite true.

Mr. Gardner: I ask that these may be marked for identification, your Honor please.

By the Court: The first one is marked "Defendant's X 1 for Identification"; and the second "Defendant's X 2 for Identification".

C. Q. 142. (By Mr. Gardner:) Now, I show you an invoice of May 23, 1914, for coal loaded into boat Crystal at Port Reading, New Jersey, made out now to the Steamship, Rollin E. Mason and Owners, and ask whether that invoice as it originally came to you was made out as the other—simply to the Atlantic Phosphate & Oil Corporation?

Ans. So far as I can recall.

Mr. Gardner: I will offer this.

By the Court: "Defendant's X-3 for Identification".

C. Q. 143. (By Mr. Gardner:) I now show you an invoice of June 9, 1914, for coal loaded into boat Rhode Island, at St. Georges Coal Pier, Staten Island, New York, which now appears as made out against Steamship, Martin J. Marran & Owners, and ask whether that, as it originally came to you was made out simply against your company?

Ans. That is my recollection.

46 Mr. Gardner: I will offer this.

By the Court: "Defendant's X-4 for Identification".

C. Q. 144. (By Mr. Gardner:) I show you another invoice dated June 20, 1914, for coal loaded in the boat H. Walker, at St. Georges Coal Pier, Staten Island, New York, made out to the Steamship Amagansett & Owners, and ask you whether, when it was originally received by you that invoice bore the heading making it out simply to your company?

Ans. Yes, sir.

Mr. Gardner: I offer this.

By the Court: "Defendant's X-5 for Identification."

C. Q. 145. (By Mr. Gardner:) One more invoice, dated July 3, 1914, for coal loaded into barge Rhode Island at Port Reading, New Jersey, made out against Steamship William B. Murray & Owners, and ask you if that, like the others as originally received by you was made out simply to the Atlantic Phosphate & Oil Corporation?

Ans. Yes,

Mr. Gardner: I offer that.

By the Court: "Defendant's X-6 for Identification".

C. Q. 146. (By Mr. Gardner:) This coal covered by these five invoices was loaded by the Piedmont Company?

Ans. I understand so.

C. Q. 147. And was it loaded on board vessels belonging to them or to you, or chartered by them or by you?

47 Ans. Part of it on vessels which they furnished and one or two cargoes, I think, on one of our barges. If you will let me see them I will tell you.

Mr. Woolsey: I object to that as immaterial, and irrelevant.

C. Q. 148. (By Mr. Gardner:) None of it was loaded upon any of the steamers which it is sought to libel in this proceeding?

The same objection.

Ans. None in those five.

C. Q. 149. Do you know where those cargoes were delivered?

Ans. I think they were all delivered at Promised Land. I can tell by referring to the notation on the invoices themselves.

C. Q. 150. If you will kindly look those over, Mr. Meadows, and say whether four were not delivered at Promised Land and one at Tiverton?

Ans. The one of June 20th apparently went to Tiverton.

C. Q. 151. The others went to Promised Land?

Ans. The other four went to Promised Land, two of them in a barge we owned and the other three were barges that the Piedmont & Georges Creek Coal Company owned.

C. Q. 152. Now, when they arrived at Promised Land or at Tiverton, when the coal arrived, what was done with it?

Ans. It was unloaded on the piers.

C. Q. 153. On to your piers?

Ans. Yes.

C. Q. 154. From your piers where did it go?

48 Ans. It went into the steamers and partially into the boiler plants at different places.

C. Q. 155. It was used as a supply for your entire fleet of 19 steamers?

Ans. It was.

C. Q. 156. And it was also used for running your two plants at Promised Land and Tiverton?

Mr. Woolsey: Objected to as irrelevant and immaterial.

Ans. That is right.

C. Q. 157. (By Mr. Gardner:) One of these shipments was made under invoice of June 20th. I will show you this letter and ask whether it was furnished pertaining to the order contained in this letter. I show you a letter signed by yourself, Atlantic Phosphate & Oil Corporation, addressed to the Piedmont & Georges Creek Coal Company, dated June 16, 1914, and ask you if that is a letter sent by

you in response to which the cargo invoiced on June 20, 1914, was furnished?

Ans. That is right.

Mr. Gardner: I will read this. It is very brief.

(Counsel reads letter.)

The letter is offered in evidence and is marked "Defendant's Exhibit 7".

C. Q. 158. (Did you have some correspondence with Mr. Bohannon with reference to the terms upon which this coal was to be furnished in 1914?

Ans. I think there was some letters exchanged, yes.

C. Q. 159. I show you a letter addressed to the Atlantic Phosphate & Oil Corporation, signed by the Piedmont & Georges Creek
49 Coal Company, Mr. Bohannon Manager of Sales, dated May 28, 1914, and ask if that is a letter referring to this matter received by you?

Ans. It is.

Mr. Gardner: I offer this to be marked for identification.

By the Court: "Defendant's X-8 for Identification."

C. Q. 160. (By Mr. Gardner:) I show you a letter dated May 28th—the same date apparently—signed by you in behalf of the Atlantic Phosphate & Oil Corporation and addressed to the Piedmont & Georges Creek Coal Company and ask if that is a letter which you wrote upon this subject?

Ans. That is the reply.

(The letter referred to is marked "Defendant's X-9 for Identification.)

C. Q. 161. Mr. Meadows, I understand you testified that at the time that the Piedmont Company was furnishing this coal in 1914 they held certain notes of your company, the Atlantic Company, some of which were renewals of those made for payment of coal furnished in 1913 and one of which at least was for a single cargo furnished in 1914?

Ans. Yes.

C. Q. 162. That is correct?

Ans. Yes.

C. Q. 163. Now, did your company, about August 24, 1914, give to the Piedmont Company a sight draft on Proctor & Gamble, Cincinnati, for $2,000 which was subsequently paid?

50 Ans. That is my understanding.

C. Q. 164. And upon what account was that payment made?

Ans. We left that to them. I don't recall that it was specifically directed what account it should apply to. I don't really know what account they did apply it to.

C. Q. 165. The only account that they had against you was the account for the coal which you furnished in 1914, and these notes?

Ans. Which were past due.

C. Q. 166. Which were all the——
Ans. Passed due.
C. Q. 167. They had been renewed—were they not?
Ans. I don't know.
C. Q. 168. You would not testify that they held any influence if they were passed due before that?
Ans. I don't know. I know the original maturity date, whether they accepted the renewals or not, I don't recall.
C. Q. 169. Did you, about August 24, 1914, pay them the sum of $2,000?
Ans. We did.
C. Q. 170. Sent them a draft for $2,000?
Ans. Yes.
C. Q. 171. Did you send that by letter?
Ans. I think we handed it to Mr. Bohannon.
C. Q. 172. I show you a letter addressed by Mr. Bohannon to your company, under date of August 24, 1914, and ask if that is a letter acknowledging the receipt of this draft?
Ans. Yes; that is it.
C. Q. 173. And that draft was paid?
Ans. That draft was paid.

Mr. Gardner: I offer this for identification.
By the Court: "Defendant's X-10 for identification."
Mr. Gardner: That is all.

51 Redirect examination by Mr. Woolsey:

Q. 174. Mr. Meadows, by the term "first lien" used in this agreement, Defendant's Exhibit 1 for Identification, you intended a maritime lien, did you?

Mr. Gardner: I object to that.
By the Court: If it is a written document it speaks for itself.
Mr. Woolsey: A first lien can only be a maritime lien.
Mr. Gardner: That is what we will argue on the paper itself.
By the Court: Let me see the paper. It is not really in the case.
Mr. Gardner: We can not put it in until we put in our own case.
By the Court: It seems to me the re-direct on that—it is simply for identification, it is not in the case yet. You can make a re-direct question on the question of identification.

Q. 175. (By Mr. Woolsey:) What was the date of the receivership of the Atlantic Phosphate & Oil Corporation?
Ans. October 19th, I think.
Q. 176. That is when the receivers were appointed?
Ans. 1914.

Mr. Woolsey: I have no objection to Mr. Gardner offering the papers now so that they will be in the case, and if Mr. Meadows is allowed to go, I will be through with him.
Mr. Gardner: I am perfectly willing to stipulate those all in.
52 By the Court: Do you make any objection?
Mr. Woolsey: I can not stipulate them in. I can have

no objection to them at this stage of the case because technically he does not offer them as exhibits until he offers them in his case. I have no objection to his offering them now, no objection based on the fact that it is my case; still we might wait and proceed in an orderly fashion.

By the Court: It is simply a matter of convenience, that is all.

Q. 177. (By Mr. Woolsey:) What was the total amount of coal which you arranged to secure from the Piedmont Company?

Ans. It is contained in one letter there—the May 28th, I believe—where it was finally confirmed, something over 10,000 tons.

Q. 178. And for that you were to give maritime liens on your entire fleet?

Ans. Yes.

Mr. Woolsey: That is all, Mr. Meadows. Now we shall have to recall you a little later.

By the Court: Any further questions?

Mr. Gardner: No, your Honor.

JOHN S. BROPHY is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Brophy, what is your position?

Ans. President of the Piedmont & Georges Creek Coal Company.

53 Q. 2. And of what State is that a corporation?

Ans. State of Maryland.

Q. 3. Was it a corporation in the State of Maryland during the year 1914?

By the Court: Is there any dispute as to the character of the plaintiff?

Mr. Gardner: None at all.

By the Court: The corporate capacity of the plaintiff is conceded—the Piedmont & Georges Creek Coal Company.

Q. 4. (By Mr. Woolsey:) Does this statement show the condition of the account between the Piedmont & Georges Creek Coal Company and the Atlantic Phosphate & Oil Corporation for the year 1913 as it existed in February 1914, with the exception of the last entry?

Ans. That is a statement of the account as it existed after February 9, 1914.

Q. 5. And at that time there was a note for $3,800 which they had given you?

Ans. Yes. There was a note came due on February 9, 1914, and they reduced that $200 and gave us a renewal for whatever—$3,800.

Q. 6. There was a note for $4,000 due which is reduced to $3,800 by the payment of $200?

Ans. Yes.

Q. 7. Then subsequently there was a draft delivered to you on Proctor & Gamble: Is that right—in August 1914?

Ans. Yes, sir.

Q. 8. For $2,000: That was paid?

Ans. That was paid.

Q. 9. And you credited that to your oldest account: Is
54 that right?

Ans. That is the way we applied it.

Q. 10. So the balance, $1,800 with interest, is the balance for the year 1913?

Ans. Due on the note.

Mr. Woolsey: I would like to have that marked as our next exhibit.

By the Court: "Plaintiff's Exhibit 4".

Q. 11. (By Mr. Woolsey:) Then, Mr. Brophy, will you look at this statement which tabulates the transactions and state whether that shows the transactions that occurred between your company and the Atlantic Phosphate & Oil Company during the year 1914?

Ans. Yes, sir; that statement includes the whole account.

Q. 12. That includes the whole old—

Ans. Yes, sir.

Q. 13. In respect to this statement, in respect to the account shown on that statement, you are suing here for the last five shipments: Is that right?

Ans. The last five shipments.

Q. 14. Of that year?

Ans. Yes.

Q. 15. Against the several boats mentioned?

Ans. Named.

Q. 16. Now, in February, 1914, do you remember Mr. Bohannon reporting to you on the request of the Piedmont & Georges Creek Coal Company for more coal?

Ans. Yes, sir.

Q. 17. What were your instructions to him? What did you say to their first proposition?

Ans. I told him I would not be interested.

55 Mr. Gardner: One moment. I don't suppose you want to put in any conversation between two of your own officers.

Mr. Woolsey: I wanted to show how Mr. Brophy instructed Mr. Bohannon that they could not go on without having a maritime lien.

Mr. Gardner: It does not seem to me that conversations between two officers of the company is proper.

By the Court: Only for the purpose of showing authority, I suppose.

Mr. Gardner: Authority is not questioned.

By the Court: Authority is not questioned. It is unnecessary.

Mr. Woolsey: May I have that memorandum? I would like to have that marked. I would like to offer this memorandum—Statement of Account showing the transactions for the year 1914, as

our next exhibit, as Mr. Gardner wishes, subject to cross-examination.

Mr. Gardner: I am perfectly willing it should be offered, that the witness should be asked questions about it, but that it goes in as a piece of evidence I think I shall have to object to it on account of the absence of any testimony that it is a transcript of any books or anything else. It is simply a memorandum which is made, as I understand it, by this witness in lieu of testimony. It ought not to go in to prove any substantive facts or any entries upon any books.

Q. 18. (By Mr. Woolsey:) Is it a transcript from your books?
Ans. Yes, sir, exactly.
Q. 19. Is the same true of the other exhibit?
Ans. Yes, sir.

56 By the Court: You claim that is upon your books, can be found thus in its present form?
Ans. As to charges and amounts—they are taken directly from our books.

Mr. Woolsey: My object in offering it, your Honor, is that it is very difficult, I have found, to prepare a complicated case and carry along the several steps—
By the Court: I understand this is merely a compilation from your books and it is not a transcript of any particular page. It is a collocation of items from different parts of the account.
Mr. Gardner: It is a short way of testifying, I suppose.
The Witness: The statements on there, of course, would be statements from the Journal and the amounts would be—the Ledger is not burdened with any statement, so that the amounts are—the statements are from the Journal, the amounts from the Ledger are absolutely correct.
By the Court: It is more convenient to have it in this shape.
Mr. Gardner: It is more convenient. I think I can cross-examine on it.
By the Court: It is presented as a transcript in the way stated by witness.
Mr. Gardner: Not, as I understand it, a transcript.
By the Court: It is a collocation of items which are a transcript of items—
Mr. Gardner: Of some parts of their journal and ledger.
Mr. Woolsey: It is a summary of accounts, for convenience of Court and counsel.

57 Q. 20. Does that account, Libellants' Exhibit 5, correctly state the balance due?
Ans. Yes, sir.
Q. 21. There are included in that account all the transactions in 1914?
Ans. I don't know whether that covers all the transactions. I didn't look at it to that extent.
Q. 22. All unpaid transactions?

Ans. Yes; all unpaid. That is the same statement that an expert bookkeeper would take from our books if he were to go there and examine them. There would not be a cent difference.

Mr. Woolsey: Will it be necessary to go into the question of the amounts on each libel, or can't we stipulate that the agreed reasonable value of the coal furnished on the several dates mentioned in the libels were the amounts therein stated?

Mr. Gardner: We could agree as to that coal furnished under those different shipments on those different dates, that it was of the value you have claimed.

Mr. Woolsey: And that they are still unpaid?

The Witness: Yes.

Mr. Gardner: We claim this $2,000 has got to be credited on those accounts.

Mr. Woolsey: Will you put in a stipulation this way: It is stipulated and agreed by and between counsel that coal was furnished of the value stated in the libel?

Mr. Gardner: We agree to that.

Mr. Woolsey: And that it has not been paid for?

Mr. Gardner: We can't say that it has not been paid for.

58 Mr. Woolsey: Then I think I had better take it up in each case.

By the Court: Do you claim simply a single credit?

Mr. Gardner: A single credit except as we claim that $2,000 should be credited on this account.

By the Court: Is there any question of the application of the $2,000?

Mr. Woolsey: That is the only question, sir, and I think we might stipulate that the amounts claimed in the libels are the agreed and reasonable value of the coal furnished as stated in the libels, and that they have not been paid, with the exception of the disputed credit of $2,000 on the Proctor & Gamble draft, and as to that, that is in dispute as to the application of that payment.

Mr. Gardner: We are perfectly willing to stipulate, as I understand it, that the amount of coal contained in those five shipments for which a lien is sought was furnished, that the prices charged for it were fair and reasonable prices.

Mr. Woolsey: And agreed to?

Mr. Gardner: And agreed to, and that it has not been paid for except as the payment of this Proctor & Gamble draft would constitute a payment in part.

By the Court: I understand that you say "furnished". It is not intended that it was furnished to a particular vessel?

Mr. Gardner: It was furnished only to the Atlantic Phosphate & Oil Corporation.

By the Court: I understand it is not intended or admitted it was furnished to these special vessels.

Mr. Gardner: No, your Honor.

By the Court: That it was furnished as an allocation,

59 under the language of the third paragraph of the libel.

Mr. Gardner: My suggestion would be that we might

stipulate that this coal was furnished at the plants of the Atlantic Phosphate & Oil Corporation in Promised Land and at Tiverton.

Mr. Woolsey: I suggest we merely agree that the amounts claimed in the libel is the reasonably agreed value of the coal shipped on the several barges mentioned in the libels, then I can go on and prove that it has not been paid.

By the Court: I do not know about the shipments on the barges.

Mr. Woolsey: Yes, sir; you will see on the third page of each libel coal forwarded on Boat Harry Husted; coal furnished by Crystal—

Mr. Gardner: Why don't you let your witness testify to it, if he can?

Mr. Woolsey: All right.

Q. 23. Mr. Brophy, is this a memorandum that you made in regard to the boats?

Ans. Yes, sir.

Q. 24. Will you refresh your recollection by looking at that, if it is necessary, and tell me whether you shipped by the boat Harry Husted, from Port Reading, New Jersey, 911 tons, at an agreed price of $3.30 per ton, and tell on what date you shipped them?

Ans. Some time between May 19th and 29th, the boat was loaded on May 19th.

Q. 25. That was delivered to Promised Land, was it?

Ans. Promised Land.

Q. 26. Charged against boat Herbert N. Edwards?

60 Ans. Yes.

Q. 27. What is the total amount?

By the Court: At what time charged against Herbert N. Edwards?

Mr. Woolsey: We libel Herbert N. Edwards for that.

By the Court: The difficulty is when there was a delivery to a particular vessel that is, I understand an allocation for a lien of a particular amount on a particular vessel.

Mr. Woolsey: We can show that some of the coal actually did reach these vessels. So far as the testimony has now gone there was, there was a general agreement on the whole fleet and a particular allocation of this shipment against this particular boat.

Q. 28. What was that amount, that first of the five shipments?

Ans. That was the Harry Husted?

Q. 29. Yes.

Ans. 911 tons—$3.30; was delivered at Promised Land $3006.30.

Q. 30. That is charged against Steamer, Herbert N. Edwards?

Ans. Yes.

Q. 31. You are suing here in respect to that amount?

Ans. Yes, sir.

Q. 32. Has that amount been paid?

Ans. No, sir.

Mr. Gardner: Does the witness understand when he says that is charged? Your honor, those words would refer to the

61 original entry. He does not mean, I think, to say that by the original entry that was charged to ship Herbert N. Edwards.

The Witness: That account is charged on our books now against that boat.

By the Court: It is not charged, in the ordinary course of business on the delivery of the goods, it is charged—it is a charge subsequently made in pursuance of an agreement as to a particular matter not directly connected with the ordinary delivery of the goods. That ought to be clearly established.

Mr. Woolsey: That is on record now.

By the Court: These are not entries made in the ordinary course of business but are entries made in accordance with a particular arrangement made by the parties?

Mr. Woolsey: Yes.

By the Court: The charges on each one of those vessels are not in the ordinary course of business, but in an extraordinary course of business and by particular arrangement.

The Witness: Under their agreement Mr. Meadows was to set the date of payment. He was to pay these first bills out of moneys advanced and he set that date of payment. Even under his agreement he was to give us the names of the boats on which we were to get a maritime lien.

(By Mr. Woolsey:)

Q. 33. In respect to the second shipment, by what boat was that?
Ans. It is charged to the boat Rollin E. Mason.
Q. 34. That was sent by what boat, shipped by what boat?
Ans. Crystal.
62 Q. 35. How many tons?
Ans. 922 at $3.65, delivered at Promised Land.
Q. What was the date?
Ans. The date was May 23d.
Q. 37. The amount.
Ans. $3365.30.
Q. 38. In respect to that amount you are suing the Rollin E. Mason?
Ans. Rollin E. Mason.
Q. 39. And has that amount been paid?
Ans. No, sir.
Q. 40. Now, when was the next shipment?
Ans. On June 9th.
Q. 41. By what boat?
Ans. Rhode Island; 1187 tons.
Q. 42. What rate per ton?
Ans. $3.10.
Q. 43. Any trimming charges, or docking charges?
Ans. $44.60 docking and trimming charges.
Q. 44. When was that shipped?
Ans. June 9th.
Q. 45. What was the amount?
Ans. $3679.70 plus $44.61 trimming charges.
Q. 46. Making a total of——

Ans. I have not got the total—yes; making a total of—no, I have not got the total.

Q. 47. $3724.31—would that be right?

By the Court: You need not stop to add it.

(By Mr. Woolsey:)

Q. 48. Has that amount been paid?

Ans. No.

Q. 49. The next shipment, the fourth shipment, was made—never mind about adding it up, sir—the next shipment was made by what boat?

63 Ans. H. Walker, June 20th.

Q. 50. How many tons?

Ans. 861 tons.

Q. 51. At what rate.

Ans. $3.75.

Q. 52. Amounting to what?

Ans. $3228.75.

Q. 53. That is charged against what ship?

Ans. The Amagansett.

Q. 54. You are suing the Amagansett here in respect to that claim?

Ans. Yes.

Q. 55. And the next one?

Ans. July 3d, Rhode Island, 1439 tons, $3.10; $65.17 trimming charges.

Q. 56. Making a total of $4526.07?

Ans. Yes; charged to boat William B. Murray.

Q. 57. You are suing Steamer William B. Murray here?

Ans. Yes.

Q. 58. Has any part of the sums in respect to these—in respect to which you are bringing these five libels been paid?

Ans. No, sir.

Q. 59. They are still unpaid with interest?

Ans. Yes, sir.

Q. 60. That amounts in all to $17850.73, does it not?

Ans. Yes, sir; I think that is correct.

Q. 61. With interest added?

Ans. With interest.

Q. 62. That is, interest is to be added from the dates of the several deliveries?

Ans. Yes, sir.

(A brief recess is taken here.)

64 Q. 63. At the beginning of 1914 in February did you know the condition of the Atlantic Phosphate & Oil Corporation?

Ans. Financially, I guess they owed us $4,000 and we were unable to get it after considerable efforts.

Q. 64. With your knowledge as to their condition would you have extended any further credit to them if it hadn't been, if they hadn't

agreed, through Mr. Meadows, to give you maritime liens for such coal as you did give?

Mr. Gardner: Objected to.
By the Court: I think the question is objectionable.

(By Mr. Woolsey:)

Q. 65. On what grounds did you give them any further credit?

Mr. Gardner: It is objected to. It is a question of fact.
By the Court: What was the agreement?
Mr. Woolsey: The agreement, the understanding.
Mr. Gardner: The witness should testify as to his own knowledge.
Mr. Woolsey: He is president of the company who authorized the agreement.
Mr. Gardner: Precisely, but the agreement was made with some one else.
The Witness: I had issued orders, not to issue any credit.

(By Mr. Woolsey:)

Q. 66. Had you issued orders not to issue any credit?

Objected to.

65 Ans. I did.

Q. 67. To the Atlantic Phosphate & Oil Corporation?

Objected to.

By the Court: I think that is a material fact.
The Witness: I had issued orders not to extend any deeper credit to the Atlantic Phosphate & Oil Corporation.

Q. 68. Why did you change those orders subsequently?
Ans. On the assurance of Mr. Bohannon that the arrangement with Mr. Meadows——

Mr. Gardner: Wait one moment. I don't think what Mr. Bohannon told is proper. It is all in evidence. It is not necessary to try to get it in twice by one who does not know anything about it.

(By Mr. Woolsey:)

Q. 69. Would you have furnished any to this company——

Mr. Gardner: Objected to.

(By Mr. Woolsey:)

Q. 70. —without having an agreement from them to give maritime liens on their fleet?

Mr. Gardner: Objected to.
By the Court. That has already been ruled out.

(By Mr. Woolsey:)

Q. 71. What agreement did you finally come to with the concern in order to lead you to give them further credit?

Mr. Gardner: If the witness will testify of his own knowledge.

66 Ans. I agreed to extend them credit provided their account was absolutely secured by maritime liens.

Cross-examination by Mr. Gardner:

C. Q. 72. To whom did you give that instruction, Mr. Brophy?

Ans. I instructed our agent Mr. Bohannon.

C. Q. 73. All you know about this matter at all, whether any agreement was made, is from statements which were made to you by Mr. Bohannon?

Ans. That is correct.

Mr. Gardner: If I were trying this case before a jury I would ask to have this testimony stricken out but I suppose it is all right as it is now.

C. Q. 74. Now, with reference to this $2,000 draft of Proctor & Gamble, that was paid, was it?

Ans. Yes.

C. Q. 75. You say you credited that on your oldest account?

Ans. That is the way it was credited.

C. Q. 76. What was that oldest account?

Ans. That was a note for $3,800.

C. Q. 77. That note, at the time the Proctor & Gamble draft came to you and at the time it was collected, was not due, was it?

Ans. No, sir.

C. Q. 78. And that note was subsequently renewed for the full amount?

Ans. Yes, sir.

C. Q. 79. And you had no other outstanding account
67 against the Atlantic Phosphate & Oil Corporation except the account for these shipments for which you now seek a lien, no account other than notes?

Mr. Woolsey: I object to that. He has already stated he did.

The Witness: There might have been some interest account; I am not sure about that.

(By Mr. Gardner:)

C. Q. 80. That would be all?

Ans. That would be all.

C. Q. 81. You have testified, Mr. Brophy, with reference to a statement or compilation of indebtedness from the Atlantic Phosphate & Oil Corporation to your company which has been marked Exhibit 5: In the last column of that statement there are entries which apparently are intended to show how the different items were settled. The first item was settled by note?

Ans. By note.

C. Q. 82. The second by note?

Ans. By note.

C. Q. 83. The third by cash?

Ans. That is so.

C. Q. 84. The fourth by cash?

Ans. That is right.

C. Q. 85. And the fifth, which is dated May 19th, 1914, has against it the entry "Charged to boat Herbert N. Edwards": That charge was not made, was it, at the time the merchandise was furnished?

Ans. No, sir; not until it was labelled the name of the boat.

C. Q. 86. And none of these charges to any of these boats which are contained in the last column of this statement were made when the coal was originally delivered?

Ans. No, sir.

68 C. Q. 87. When the coal was originally delivered the coal covered all these five last shipments for which you are now claiming, it was all charged simply to the Atlantic Phosphate & Oil Corporation?

Mr. Woolsey: I object to that as irrelevant and immaterial.

By the Court: Objection overruled.

Ans. Yes, sir.

(By Mr. Gardner:)

C. Q. 88. You answered yes?

Ans. Yes.

C. Q. 89. Where did you get these items charged to the different boats from, what one of your books did you take them?

Ans. We did—we originally got the names from him.

C. Q. 90. When you made that, or before you made up these five, what books did you go to, or what account, to get these items?

Ans. Well, we would go to our journal and ledger to get the account.

C. Q. 91. Not the account, the items contained in the last column?

Ans. We were supplied with the names of the boats, we made cross-entries on our journal crediting the Atlantic Phosphate & Oil Corporation according to the agreement and charging the boats.

C. Q. 92. Then those items were taken from entries upon your journal?

Ans. Yes, sir, and ledger.

C. Q. 93. Made after all this coal had been delivered, and after it had been originally charged simply to the Atlantic Phosphate & Oil Corporation?

Same objection.

69 Ans. Yes.

C. Q. 94. With reference to this $2,000 draft—was that originally credited upon any special note?

Ans. No, sir; I think not.

C. Q. 95. I show you a claim which you made as liener, or a claim made by the Piedmont & Georges Creek Coal Company as lienor, and signed by yourself as president of that company—or, rather, I show you a paper purporting to be signed, and ask you if that is what it purports to be?

Ans. What is your question?

C. Q. 96. That is a statement of claim made by you in behalf of your company to the Atlantic Phosphate & Oil Corporation?

Ans. Yes.

Mr. Woolsey: It is not a lien claim.

Mr. Gardner: Oh, no; it is a statement of this company against the Atlantic Company.

Mr. Woolsey: In respect to certain collateral.

Mr. Gardner: In respect to what was filed with them as a claim.

Mr. Woolsey: A claim against certain collateral. It speaks for itself.

Mr. Gardner: Very well, I simply identify it.

C. Q. 97. Now, I ask you whether you did not, in this claim, include the three notes being all that you had and aggregating, as you state in this claim, the sum of $8,853.32 and did not further state that of that amount the sum of $6,853.32 remains unpaid, and I ask you if the difference between the amount for which you claim and the amount which you state remains unpaid is not represented by that Proctor & Gamble note?

Ans. It was represented by that.

70 C. Q. 98. And there was nothing upon your books which showed the appropriation of that sum, of the amount of that draft—any special note?

Ans. At that time?

C. Q. 99. At that time.

Ans. I don't know what the date of that is.

C. Q. 100. This is dated January 4, 1915.

Ans. At that date—at the date of that, why it was then charged in this.

C. Q. 101. Against the three notes?

Ans. Against one note.

C. Q. 102. On what note was it charged against them?

Ans. Against the $3,800, first note.

C. Q. 103. When was it first charged against the $3,800 note?

Ans. When we were advised that we could apply—when it was within our discretion to apply it against the oldest account.

C. Q. 104. When was that, about the time you made out this statement?

Ans. No. It was before that, if that is dated January.

C. Q. 105. And for the first time you made application against that note?

Ans. Yes.

C. Q. 106. You didn't hold that a special note at the time that

application was made, did you, you held another note of which that was a renewal?

Ans. Yes.

Mr. Gardner: I offer this and ask to have it marked for identification—"Defendant's X-11".

That is all.

71 Redirect examination by Mr. Woolsey:

Q. 107. Now, Mr. Brophy, this paper which Mr. Gardner has just been showing to you, that was merely a notice, was it not, with regard to foreclosure of certain collateral which you held?

Ans. Yes.

Q. 108. Now do you remember when it was that you charged this $2,000 received from the Proctor & Gamble note against the balance due from the season of 1913 as shown by Plaintiff's Exhibit 4?

Ans. The exact date it was charged, do you mean against that?

Q. 109. Yes; when it was charged against that.

Ans. Well, we received the draft for $2,000 in August—the 25th—apparently. I think the note was renewed in September, and it was not until it passed into the hands of the receivers that we were instructed that we could apply——

Mr. Gardner: Instructed by your counsel.

The Witness: Yes, sir—that we could apply that to the oldest account. We applied it generally on the books, when we first received it it would be cash to the whole account.

(By Mr. Woolsey:)

Q. 110. To the whole account?

Ans. To the whole account.

Mr. Woolsey: I think that is all.

Mr. Gardner: That is all.

72 Charles R. Horton is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. Mr. Horton, what is your business?

Ans. I work for the Atlantic Phosphate & Oil Corporation at Promised Land. My duties are general.

Q. 2. Did you work for them during 1914?

Ans. I did.

Q. 3. Are you working down there now for a similar concern?

Ans. I am.

Q. 4. Have you brought with you to court to-day any records showing the cargoes of coal received at Promised Land from the Piedmont & Georges Creek Coal Company, and the use made of that coal?

Ans. I have.
Q. 5. Can you produce them?
Ans. Yes.
Q. 6. Will you do so?
(Certain papers are produced by the witness.)
Q. 7. Are those correct copies of your original records, or are they the original records?
Ans. I have the original records and copies I have made of them for distribution.
Q. 8. Will you state when the coal forwarded by the boat Harry Husted, from Port Reading, in May, was received at Promised Land, and how the 911 tons were used?

Mr. Gardner: I objeet. I think it makes no difference how this 911 tons were used. They were to be furnished, as the testimony produced in behalf of the libellants shows it was furnished, simply to the company. It was only for supplies furnished to a vessel that a lien attaches, and that if it was delivered simply to the company, as the testimony here shows it was originally delivered to the company, it makes no difference where it subsequently goes even though some of it went into the vessel which is sought to be libelled.

73

Mr. Woolsey: There are two counts on our libel—the first is for a lien under a contract, and the second is for a maritime lien by way of furnishing coal. I desire to show——
By the Court: You can show, if you can, what coal was received by any vessel involved in these libels.
Mr. Gardner: Simply that we reserve our rights, I will take an exception to testimony of that character.
By the Court: Very well.
(The question is read.)
Mr. Gardner: Just one moment, if we are going to do this, would it not be better to identify this as coal now sought to be charged against some steamer in the case? There are five different libels. They are tried together but they are each a separate proceeding. The claim is that a certain amount of coal not 911 tons was furnished to the Edwards.
By the Court: We do not care what was done with any other coal except so far as it relates to these libels.
Mr. Gardner: Precisely.
Mr. Woolsey: May I move to consolidate the libels? Your Honor has power to do that and not only try them together but try them as one case?

By the Court: We are trying them practically together. I do not know what question might arise were we to consolidate them. These are all intervening libels?

74

Mr. Woolsey: They are.
By the Court: Is it at all material for your case to show the disposition of any coal except what went into one of these vessels?
Mr. Woolsey: I will have to know what was done with the coal in order to know whether it went into those vessels or some other vessels on which we did have liens by the agreement, but which we

are not actually suing here. If there is a substitute by one lien for another——

By the Court: Can you swop liens?

Mr. Gardner: You are not asking for liens on our fourteen other vessels?

Mr. Woolsey: No. We had liens on your other fourteen vessels owing to Mr. Brophy's good nature they were not enforced. If they actually got the coal there is no question whatsoever we have a right to apply them here.

Mr. Gardner: You are now proposing to show not only what coal went to the vessel against which a lien is sought but what coal went on all our vessels against which no lien is asked at all.

By the Court: That must be on the theory that the parties to the contract had a right to swop liens.

Mr. Healy: It is on the theory that all these vessels are treated as one vessel in this arrangement. We might have attacked only one vessel for all this coal. This whole fleet is taken as one vessel and we see fit to attack five.

Mr. Gardner: If you agree to take five, take them now.

75 Mr. Healy: It is five for the whole bill, your Honor.

By the Court: That is the plaintiff's theory, that it is a unit.

Mr. Healy: Exactly.

By the Court: I have known of a tug and tow being sued as a unit.

Mr. Woolsey: I ask you to allow it to go in. It can not possibly prejudice them.

By the Court: My present impression is you can not attach it except on the actual receipt of the coal by the vessel and to swop on agreement of this sort does not confer a lien. Of course, it would be a very serious question, if they allow this, against other lienors who might file other liens on other vessels.

Mr. Woolsey: I think the authorities show pretty clearly that the owner of a vessel can do what he will with his own. It is not a question of implication arising from the Lien law.

By the Court: It is a question of other lienors and other creditors. I will let you put the evidence in for what it may be worth.

(The question is read.)

Ans. They were received on May 29th, 105 tons for use at the factory; 805 tons for the steamers. Now, I understood——

By the Court: What steamers?

Ans. I understood that I was to furnish the whole four cargoes given at the Promised Land at a lump, and I have furnished the four cargoes.

76 By the Court: Not what you did, but where the coal went, as a matter of fact.

Ans. I couldn't tell you just now.

(By Mr. Woolsey:)

Q. 10. Have you any data with you showing what coal was furnished from Promised Land to the Steamers Herbert N. Edwards,

Rollin E. Mason, Martin J. Marran, Amagansett, and William B. Murray from the coal sold by the Piedmont & Georges Creek Coal Company?

Ans. I have.

Q. 11. Can you give those amounts?

Mr. Gardner: I object: in the first place it covers the whole four shipments for which a lien is sought upon four different steamers.

By the Court: Are you not going to individualize this or is it another lump?

Mr. Woolsey: I have not seen this witness before. Mr. Collette agreed to have him produced here instead of my having to subpœna him from Long Island. I am asking him as a more or less hostile witness to tell what proportion each boat got.

By the Court: Find out what account he has got.

(By Mr. Woolsey:)

Q. 12. What sort of accounts did you keep of those things and the coal you furnished—how did you keep the accounts?

Ans. I kept an account as it went out and made a monthly report of what each boat took.

Q. 13. Was all the coal you had there from the Piedmont & Georges Creek Coal Company except what you stated was used at the factory, furnished to all these boats?

Ans. All the steamers, yes, sir.

77 Q. 14. How much was furnished from the coal you received from the Piedmont & Georges Creek Coal Company during the season of 1914, at Promised Land, to the Steamship Herbert N. Edwards?

By the Court: When you say "all these boats" what do you mean?

Mr. Woolsey: I mean these five boats we are discussing.

By the Court: Were these the only boats taking coal at Promised Land?

Mr. Woolsey: I don't know, sir. I will change my question and simply ask him how much coal from the coal furnished by the Piedmont & Georges Creek Coal Company, during the season of 1914, at Promised Land, was loaded on board Steamship Herbert N. Edwards, for its use.

Mr. Gardner: It is in testimony here that in 1914 one cargo was furnished and notes were taken for it secured by bonds; another cargo was furnished and notes were taken for it, and those notes were paid; and another cargo was furnished in 1914 for which cash was paid; another cargo was furnished and a fourth cargo for which cash was paid. Now this witness is asked to state, and can only state in the very nature of things, what coal was taken from the pile at Promised Land, and that question covers not only the coal for which they are seeking a lien in this case but four cargoes of coal furnished before during the year 1914.

Mr. Woolsey: Perhaps I had better limit my question to begin the 29th of May when the boat Harry Husted arrived at Promised Land.

78 Q. 15. Can you state how much coal was furnished to each of those five vessels?

Mr. Gardner: That is equally objectionable as to whether all these four cargoes were there.

Mr. Healy: They were used up then.

Mr. Woolsey: Your Honor, we supplied the coal——

By the Court: Unless you took an account of stock at that time I do not see that your figures would help much.

Mr. Woolsey: The answer to that, I think, is we had a lien under agreement on all their boats for coal furnished and all coal sent there in 1914 having been furnished under that agreement, that took itself right along by way of lien, and for any coal we had there on the Herbert N. Edwards I am entitled to know how much that was.

Mr. Gardner: You are only asking for a lien for this coal, you are not asking for a lien on cargoes for which you received the money and only a week before one of the cargoes paid for was delivered there, according to your testimony.

By the Court: You must exclude anything for which you have been paid.

(By Mr. Woolsey:)

Q. 16. Have you any records showing how much coal was furnished to the Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and the William B. Murray, for their respective uses, subsequent to the arrival of barge Harry Husted at Promised Land?

Mr. Gardner: I object.

The Witness: I have.

79 By the Court: He says he has.

(By Mr. Woolsey:)

Q. 17. How much do they average?

By the Court: Here is paid for coal on the dock, in a heap, and lien coal, if we may call it so. Now any furnished from the paid for coal is of no consequence.

(By Mr. Woolsey:)

Q. 18. How much coal did you have on hand when the Husted arrived there, can you tell about that?

Ans. We had approximately 1068 tons received from the barge Crystal on the 19th of May.

Q. 19. Then was the other coal on the Harry Husted put in a separate compartment, or on top of that coal?

Ans. It was put with that coal.

Q. 20. Which was used first when you started to use the coal after the arrival of the Husted? Was the Husted coal used first, or the other coal?

Mr. Gardner: How is it possible to tell.

Mr. Woolsey: I don't know whether it is possible; sometimes things are kept separate.

Mr. Gardner: He says they are put in the same pile.

Mr. Woolsey: Your Honor, I think we are entitled to show that our coal was put in, and we were sending coal there continually, but as Mr. Healy calls my attention to it, we have got no longer a lien covering the whole thing, because they have paid for some cargoes but they have not paid for the first two, and they have not paid the last five.

80 Mr. Gardner: You haven't filed any lien for those.

Mr. Woolsey: We have got no longer a lien for those, for everything, but we are entitled to show what part was used subsequently to the arrival of the first boat, and we are suing for what went to each of the five steamers involved in these libels.

By the Court: Well, it simply illustrates the difficulty, on your theory of——

Mr. Woolsey: It might possibly be, sir, that a Commissioner will have to take evidence as to the details of damage hereafter, but I think we are entitled to know here how much this witness said he furnished, subsequent to the arrival of the Harry Husted, to the Edwards and these other boats because however you look at it, if some coal was there and we furnished more coal. It does not make any difference whether we substitute new coal in place of the old coal or not. Our coal was used on board the Edwards and on board the Mason, and whether it was exactly the same piece of coal or not, it was coal we were steadily supplying to them in a series of boats and was for their use on their boats. I think we are entitled to show exactly what amount was used by each of them.

By the Court: I do not know what it will come to when it is in. Make it as short as possible.

Mr. Gardner: Exception, your Honor.

(By Mr. Woolsey:)

Q. 21. What have you got there?

Ans. Herbert N. Edwards, 424 tons.

Q. 22. Have you got the dates?

Ans. No, sir.

Q. 23. How much the Rollin E. Mason?

Ans. 299 tons.

Q. 24. And the Martin J. Marran?

81 Ans. 251 tons.

Q. 25. And the Amagansett?

Ans. 492 tons.

Q. 26. William B. Murray?

Ans. 288 tons.

Q. 27. All that coal was furnished to these vessels after the arrival of the Harry Husted, at Promised Land, and was discharged on May 29, 1914?

Ans. It was.

Q. 28. Is that right?

Ans. Yes, sir.

Q. 29. Was there any coal furnished you by the Piedmont & Georges Creek Coal Company after the arrival of the Harry Husted in May 29, 1914, to other vessels of your fleet than the five vessels named in these libels?

Ans. There was.

Q. 30. How much was furnished?

Mr. Gardner: Objected to.

By the Court: Under the same understanding it may be answered.

Ans. Do you want me to give it by boats.

(By Mr. Woolsey:)

Q. 31. If you will.

By the Court: Is that necessary?

Ans. The Walter Adams——

By the Court: I do not think the detail is necessary.

(By Mr. Woolsey:)

Q. 32. Then give the total furnished the boats other than these five.

82 By the Court: Furnished the boats of the 17 other than these five?

Mr. Woolsey: Other than these five, yes, sir.

Ans. 1814 tons.

Q. 33. That is, 1814 tons was furnished at Promised Land for coaling purposes, steaming purposes, to other boats of this fleet than the five mentioned in this libel. Is that right?

Ans. That is right.

Q. 34. And all this coal that you testify to was the Piedmont & Georges Creek Coal Company coal which went to the use of your fleet?

Ans. It was.

Mr. Gardner: Do you mean it all went to the use of the fleet?

Mr. Woolsey: I said all he testified to, that he testified went to the use of the fleet, he said some was used in the factory.

Q. 35. All the coal that you have referred to in your testimony was coal which was used by your fleet, including the five vessels under libel, subsequent to May 29, 1914, when the Harry Husted arrived?

Ans. It was.

Mr. Woolsey: That is all.

Mr. Gardner: That is all.

CHARLES E. MILLIGAN is produced as a witness in behalf of the libellants and, having been duly sworn, testifies as follows:

Direct examination by Mr. Woolsey:

Q. 1. What is your position, Mr. Milligan?

Ans. Position at the present?

83 Q. 2. Yes.

Ans. Manager of the Seaboard Fisheries Company.

Q. 3. What was your position in 1914?

Ans. I was at Tiverton running the plant.

Q. 4. For what?

Ans. The Atlantic Phosphate & Oil Corporation, subject to Mr. Meadows.

Q. 5. Were you in position to know anything about the use of coal which was delivered to you from time to time at Tiverton?

Ans. I was, yes.

Q. 6. Well, was there a shipment of coal received by you at Tiverton from the Piedmont & Georges Creek Coal Company for use—when did it come?

Ans. June 20, 1914.

Q. 7. Did you keep any record to the total amount that was on board that barge?

Ans. Yes; 861 tons.

Q. 8. Did you keep any record showing what was furnished from the coal received from that barge to the Steamships Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray?

Ans. I kept a record of the distribution of the entire cargo of those five boats included.

Q. 9. Have you that record showing how much each of those boats received?

Ans. No; I haven't it with me. I was summoned here on short notice. I was on Long Island. I had that record in the Tiverton office.

Q. 10. I thought you were going to bring that along.

Ans. Mr. Cox probably has the record. I made a record for Mr. Cox and he received it.

Q. 11. Is that (indicates) the record which you made?

Ans. Yes.

84 Q. 12. Can you state how much of that cargo of the boat H. Walker was delivered to the Steamship Herbert N. Edwards for use in steaming?

Mr. Gardner: Is that question a question as to the amount of coal from this cargo or the amount of all the coal that was delivered from Tiverton after this cargo arrived?

Mr. Woolsey: From this cargo.

Ans. When this cargo arrived, if I correctly remember, we had but very little coal that was in the boiler room and not in the coal bin.

Q. 13. So you have this coal separate?
Ans. We have this coal separate.
Q. 14. How much was furnished to the Herbert N. Edwards?

Mr. Gardner: This is objected to, and exception.
By the Court: The same ruling.

(By Mr. Woolsey:)

Q. 15. Out of this cargo from the H. Walker?
Ans. I kept this in monthly accounts, what each boat got. I kept the account of coal in monthly accounts. The Edwards got coal in July, which was charged in the month of July.
Q. 16. Does this summary correctly state it?
Ans. I will have to check it off—the Edwards, you want?
Q. 17. I want the amount furnished to each one from that cargo. You can take it July, and then August, whichever way is easiest for you.

By the Court: I think that had better be prepared during the noon recess. I think we will stop here now.
85 Mr. Woolsey: Can we not put this whole record in?
The Witness: That record is correct.
Mr. Gardner: If you want to take the figures we pick out from that record we will give them to you.

(By Mr. Woolsey:)

Q. 18. Is this record correct?
Ans. That record is correct.
Mr. Woolsey: I will put this record in.

Q. 19. Does that show how much each of those boats got?
Ans. That shows what each of the boats got and what was used at the plants of that cargo.
Q. 20. And also what all the boats got, not only these five boats in question but all the boats?
Ans. (No answer.)

Mr. Woolsey: I will put that in evidence as our exhibit.
By the Court: "Plaintiff's Exhibit 6".
Mr. Gardner: That is subject to our general objection.
By the Court: You object to it on the ground that it is not properly made up?
Mr. Gardner: No, we are willing it should go in subject to our general objection to that line of testimony.
By the Court: What is your objection—as to this specific record?
Mr. Gardner: Not at all; we should take any reply made by the witness based upon that record.
By the Court: That is Plaintiff's Exhibit 6.
Mr. Woolsey: That is all.

86 Cross-examination by Mr. Gardner:

C. Q. 21. Was any more coal received at Tiverton during the summer of 1914—during the year 1914, after this cargo was received?

Ans. No.

Mr. Gardner: That is all.

Libellants rest.

Evidence for Claimant.

Mr. Gardner: I offer these various documents that have been marked for identification. Have you any objection?

By the Court: Defendant offers 11 Exhibits previously marked for identification.

Mr. Woolsey: Yes, sir; and I object. We will object to all of the exhibits offered with the exception of Nos. 2, 3, 4, 5 and 6, as immaterial, irrelevant and incompetent in view of the contract between the parties.

By the Court: Now, is there any special ground for objection? If there is it should be pointed out to the Court at this time for I do not make any blanket ruling.

Mr. Woolsey: My point is that with regard to all of these other documents, shown—the bills as amended—that there is no relevancy at all in view of the agreement for a maritime lien made by
87 Mr. Meadows with Mr. Brophy and Mr. Bohannon, that all these other documents—I don't know what purpose they are offered for, they merely go to the amount of coal which should be furnished, or something of that kind, and they really are not material on the main question of lien. That is the point I make about it.

By the Court: The matter in my mind specifically to rule upon a whole lot of documents I have not seen. I do not know what they are except, of course, in a general way.

Mr. Woolsey: I presume in a trial in admiralty where it is considered to be a new trial, in the Circuit Court of Appeals, the practice would be to allow the objector to register his objection and the documents go in subject to the objection so that the whole record could be before the Court.

By the Court: I do not admit things I do not know about. Here we have a lot of exhibits marked for identification. They are offered and objected to. State your grounds for offering them and their relevancy to the case.

Mr. Gardner: Your Honor suggests that I state why these should be admitted in evidence?

By the Court: Perhaps if you will tell me what they are.

Mr. Gardner: Exhibit 1 is a paper purporting to be a contract between the libellants and the Atlantic Phosphate & Oil Corporation, dated February 13, 1914, and was referred to by witnesses by the libellants as having been executed at and it has to do with the

first shipment of this coal. I offer it in evidence as "Exhibit No. 1."

Mr. Woolsey: We don't object to that.

By the Court: Objection to Defendant's Exhibit No. 1 for Identification is waived, and it is admitted.

88 Mr. Woolsey: I don't object to the first six of them.

Mr. Gardner: 2, 3, 4, 5, 6 are invoices with orders.

By the Court: 2, 3, 4, 5, and 6 are not objected to.

Mr. Gardner: That each include four papers put together.

Exhibit No. 7 is a letter from Mr. Meadows representing the Atlantic Phosphate & Oil Corporation to libellants ordering or authorizing them to supply a cargo of about 700 tons of coal to the Tiverton plant and it seems to us to have an important bearing upon the conditions under which that actually was delivered.

By the Court: Admitted.

Mr. Woolsey: I object to that one as immaterial, irrelevant and incompetent.

By the Court: Very well.

Mr. Gardner: Exhibit No. 8 is a communication from the Piedmont & Georges Creek Coal Company to the Atlantic Phosphate & Oil Corporation, dated May 28, 1914, confirming the agreement for the furnishing of coal which is therein referred to and which we think has a most important bearing.

By the Court: The same ruling.

Mr. Woolsey: I object to that.

By the Court: The same ruling.

Mr. Gardner: Exhibit No. 9 is a letter from the Atlantic Phosphate & Oil Corporation signed by Mr. Meadows, addressed to the Piedmont & Georges Creek Coal Company, by Mr. Bohannon confirming a certain agreement relative "to our requirements for coal at Promised Land and Tiverton for the coming season", etc.

By the Court: Admitted.

Mr. Woolsey: The same objection.

89 By the Court: The same ruling.

Mr. Gardner: No. 10 is a letter from the Piedmont & Georges Creek Coal Company to the Atlantic Phosphate & Oil Corporation acknowledging the receipt of this sight draft on Proctor & Gamble and which we think has a bearing upon the question as to whether the amount of this draft should have been credited upon its open account which is covered by these libels, or should have been credited upon the note.

By the Court: Admitted.

Mr. Woolsey: The same objection.

By the Court: The same ruling.

Mr. Gardner: Document No 11 is a claim made by the Piedmont & Georges Creek Coal Company——

By the Court: I remember that—admitted.

Mr. Wolsey: The same objection.

Mr. Gardner: Now, I think we have no testimony to offer beyond that.

Evidence for Libellant in Rebuttal.

THOMAS C. MEADOWS is recalled in rebuttal and further testifies, as follows:

Direct examination by **Mr. Woolsey**:

Q. 1. Now, Mr. Meadows, why was it that the Atlantic Phosphate & Oil Corporation didn't go into a receivership in 1913?

Mr. Gardner: Objected to.

90 Ans. Primarily, I presume, because no creditors——

Mr. Gardner: Wait one minute. I object to that. The only question is whether they knew about their perilous condition. He said they did.

By the Cour: This is opening up a pretty broad field.

(By Mr. Woolsey:)

Q. 2. Did you carry the company along yourself?

Ans. I undertook to——

Mr. Gardner: I object.

By the Court: I do not think that is of any consequence.

(By Mr. Woolsey:)

Q. 3. Did any one else have anything to do with ordering coal for the company for the season of 1914, except yourself?

Ans. Nobody.

Q. 4. You had entire charge of it, did you?

Ans. I did.

Q. 5. Now, Mr. Meadows, this agreement which has been marked Defendant's Exhibit 1 for Identification, was that the agreement under which the first cargo of coal was furnished in 1914?

Ans. That was.

Q. 6. And the second cargo was furnished——

Ans. Under exactly similar conditions.

Q. 7. Was there an agreement that they should be a lien on the entire fleet, to furnish that cargo, the second cargo, and all other cargoes——

Mr. Gardner: That instrument must be interpreted according to its terms.

91 By the Court: The question is somewhat suggestive.

Mr. Woolsey: I am referring to the prior arrangement.

By the Court: I think the question is altogether too leading for a case of this kind.

(By Mr. Woolsey:)

Q. 8. Now, Mr. Meadows, what was your idea in having that contract, that agreement made in respect to the first cargo?

Mr. Gardner: Objected to.
By the Court: Objection sustained.

(By Mr. Woolsey:)

Q. 9. On May 28th did you receive a letter from the Atlantic Phosphate & Oil Corporation—I mean, from the Piedmont & Georges Creek Coal Company?
Ans. I did.
Q. 10. And did you reply to that by the letter of May 28th?

By the Court: Are these exhibits in the case?
Mr. Woolsey: Yes, sir—Libellants' Exhibits 8 and 9.

Ans. I did.
Q. 11. What was the understanding, the agreement referred to in these letters?

Mr. Gardner: I object.
By the Court: What do the letters say?
Mr. Gardner: They are right in the letter. It states what the understanding was.
92 (The Court reads the letters in question.)
By the Court: Do you propose to go into anything outside of these letters?
Mr. Woolsey: I propose to show that those letters don't as I understand Mr. Gardner is going to contend, constitute a contract. They don't show place of delivery, time of delivery, credit, they don't show anything. I ask Mr. Meadows whether the agreement referred to in that letter of his, I ask him what that agreement is. You see in his letters on the second or third paragraph——
Mr. Gardner: Mr. Meadows has already testified very fully what the agreement was. Those letters speak for themselves.
Mr. Woolsey: I want to ask him what agreement was referred to by that letter, only the amount of coal is involved in that, nothing else, not the prices, nothing else. It can not be contended that is a contract of any kind. It is merely a confirmation as to the amounts.
By the Court: Well, there is nothing to be explained, is there?
Mr. Woolsey: It refers to "as per our agreement." I want to ask him what agreement he referred to.
By the Court: Ask him.

(By Mr. Woolsey:)

Q. 12. Mr. Meadows, in your letter of May 28th you refer to an agreement and state if the Piedmont & Georges Creek Coal Company wants any formal contract you will be glad to supply it. Will you state what agreement you referred to?
Ans. An agreement that in supplying the coal, if we supplied it, subject to maritime lien on the steamer.

93 Q. 13. And that exhibit——

By the Court: You mean by that, an oral agreement?
Ans. Yes.

Mr. Woolsey: An oral agreement, and this agreement which is marked Defendant's Exhibit 1 for Identification, was that a modification in respect to the first cargo of the general oral agreement?
Mr. Gardner: That document, it seems to me, certainly speaks for itself as to what he meant when he said they would have the first lien.
By the Court: Whether or not it was a modification you would have to look at the document itself.

Mr. Woolsey: That is all.
Mr. Gardner: That is all, Mr. Meadows.

Noon Recess.

(At the afternoon session counsel argue the case.)

Stipulation on Behalf of Claimant.

(Filed in the Consolidated Cause #1359, July 24, 1915.

It is stipulated and agreed as follows:

1. That all of the vessels included within the above libel were described in and subject to a certain mortgage or deed of
94 trust given by the Atlantic Phosphate & Oil Corporation to the Astor Trust Co. as Trustee, known as the Refunding Gold Bond Mortgage of the Atlantic Phosphate & Oil Corporation, bearing date July 1, 1913.

2. That on the twenty-ninth day of December, 1914, a bill of complaint praying for a foreclosure of and sale under said mortgage was filed in this Court by the Astor Trust Co. as Trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation, et als., Defendants, said cause appearing on the files of this Court as Equity No. 45; that said cause was thereafter consolidated with and now appears on the files of this Court as "Waldermar Schmidtmann, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44."

3. That thereafter on the eighth day of March, 1915, a decree of foreclosure and sale under said mortgage was entered in the above entitled consolidated cause, and subject to the provisions thereof all of the vessels included within the above libel and subject to said mortgage as aforesaid were sold at public auction on the twenty-fourth day of April 1915, by the Receivers of the Atlantic Phosphate & Oil Corporation, acting as Special Masters under and by virtue of said decree; that said vessels were purchased at said sale by J. Treadwell Bullwinckel, acting for and on behalf of the Seaboard Fisheries Co. Inc., a corporation organized under the laws of the State of New York and having an office in the Borough of Manhattan, in the City and State of New York, the said Seaboard Fish-

eries Co., Inc. being the claimants herein; that the said vessels were conveyed and transferred by said Special Masters to said Seaboard Fisheries Co. by separate bills of sale dated May 29, 1915.

95 4. That the decree of foreclosure and sale entered in the cause of "Waldemar Schmidtmann, Complainant, against Atlantic Phosphate & Oil Corporation, Defendant, in Equity, Consolidated Cause, No. 44," hereinbefore referred to in paragraph 3, excepting therefrom, however, all descriptions of real estate contained therein, shall be and it hereby is introduced as evidence in this cause, and shall be marked "Defendant's Exhibit No. 12" subject, however, to the right of the libelant to object as to the materiality, relevancy or competency in these proceedings of the said decree or the matters therein referred to.

CONVERSE & KIRLIN,
FRANK HEALY,
Proctors for Libellants.
GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Stipulation on Behalf of Libellant.

(Filed in Consolidated Cause # 1359,) August 20, 1915.

It is stipulated and agreed as follows:

1. That the following questions and answers may be added as herein indicated, to the testimony of Charles R. Horton taken at a hearing held June 14, 1915 in the case of Benjamin Marchant, et al., libellants, vs. Fishing Steamer Edwards, libellee Admr. No.

96 1334, which testimony has been stipulated into this consolidated cause, and it is admitted and agreed that said Charles R. Horton would testify in manner and form therewith if recalled as a witness therein.

Testimony of Charles R. Horton, page 63, after question 26 and before question 27 insert the following questions and answers:—

Q. 26a. Walter Adams?
A. 99 tons.
Q. 26b. Alaska?
A. 304 tons.
Q. 26c. Arizona?
A. 35 tons.
Q. 26d. George Curtiss?
A. 193 tons.
Q. 26e. Montauk?
A. 121 tons.
Q. 26f. Quickstep?
A. 19 tons.
Q. 26g. Ranger?
A. 253 tons.

Q. 26h. East Hampton?
A. 482 tons.
Q. 26i. Sanford?
A. 3 tons.
Q. 26j. Strong?
A. 157 tons.
Q. 26k. And how much coal was supplied to the factory?
A. 891 tons.

2. That "Plaintiff's Exhibit 6" introduced on behalf of the libellants and referred to on pages 67 and 68 of said testimony is to
97 evidence of Charles E. Miligan, offered by the libellants as evidence as to the distribution of all the coal therein referred to and shall be considered as in evidence for such purpose, subject only to the objections by the said claims as appears in the testimony upon the offer of said plaintiff's exhibit 6.

3. That answers to the interrogatories propounded in the cause entitled "Piedmont & Georges Creek Coal Company vs. Fishing Steamers Walter Adams, et al., Admr. No. 1359," now included within the above entitled consolidated cause, are hereby waived.

4. That all the evidence presented to the court at said hearing held on June 14, 1915 in the case of Benjamin Marchant et. al., Libellants, v. Fishing Steamer Edwards, Libellee, Admr. No. 1334 were conditions or the amendments therein stipulated and shall be considered for all purposes as evidence presented in the above entitled consolidated cause subject to either party to press objections made at the trial.

98 *Libellant's Exhibit 1, Consisting of 9 Orders.*

(Filed in Consolidated Cause #1359).

Atlantic Phosphate & Oil Corporation.

New York, Feb. 17, 1914.

Order No. 1015.
Req. No. 2718.

M Piedmont & Georges Creek Coal Co. 30 Church St., City.

Please Fill our Order for the Following and Ship Via Barge "Crystal". To Promised Land, L. I. 1083 tons of Coal, $3,032.40, @ $2.80 per ton, f. o. b. Port Reading, N. J.

(Shipped by you to Promised as per bill of lading of Feb. 11, 1914. Billed by you Feb. 13, 1914—$3,032.40).

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

Atlantic Phosphate & Oil Corporation.

New York, March 25, 1914.

Order No. 1092.
Req. No. 66.

M Piedmont & Georges Creek Coal Co. 30 Church St., City.

Please Fill our Order for the Following and Ship Via Barge B. F. Mesick, to Promised Land, L. I. 1 Barge Bituminous Coal 679 tons at 2.80, f. o. b. Port Reading.
(Shipped by you to Promised as per bill of lading of March 9, 1914.
Billed by you March 23, 1914.—$1,901.20
Advances— 47.74

1,948.94

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

99 Atlantic Phosphate & Oil Corporation.

New York, May 5, 1914.

Order No. 1218.
Your order No. 568.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Please fill our order for the following and ship via barge "Crystal," to Promised Land, L. I.: 1,068 tons of Georges Creek Thin Vein $3.30 gross ton. F. o. b. Promised Land, L. I.
(Confirmation of your Shipment of May 2, 1914.)
May 6, 1914. Rec'd.

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

Atlantic Phosphate & Oil Corporation.

New York, May 13, 1914.

Order No. 1273.
Req. No. (Your Order No. 578.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Please fill our order for the following and ship via Boat "Frank Jenkins" to Tiverton, R. I.: 750 tons Georges Creek Thin Vein Coal at 3.40 per ton. C. I. F., Tiverton, R. I.
(Per Confirmation of May 12th, 1914.)
May 14, 1914. Rec'd.

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

100 Atlantic Phosphate & Oil Corporation.

NEW YORK, May 29, 1914.

Order No. 1353.
Your O. No. 593.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York:

Via Boat Crystal, to Promised Land, L. I., 900 tons Georges Creek, $3.65 gross ton.
(Delivered C. I. F. Promised Land.
(Per verbal agreement with Our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

June 1, 1914. Rec'd.

Atlantic Phosphate & Oil Corporation.

NEW YORK, June 8, 1914.

Order No. 1394.
Your Order No. 602.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City:

Please fill our order for the following and ship via barge Rhode Island, to Promised Land, L. I., 1200/1400 tons Georges Creek Coal, $3.10 gross ton, f. o. b. St. George.

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

June 9, 1914. Rec'd.

101 Atlantic Phosphate & Oil Corporation.

NEW YORK, May 29, 1914.

Order No. 1352.
Your O. No. 594.

M. Piedmont & Georges Creek Coal Co., 30 Church St., New York City:

Via Boat Harry Husted to Promised Land, L. I., 900/1100 tons Piedmont Coal, $3.30 gross ton.
(Delivered C. I. F., Promised Land.
(Per verbal agreement with Our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

Jun- 1, 1914., Rec'd.

Atlantic Phosphate & Oil Corporation.

NEW YORK, June 17, 1914.

Order No. 1438.
Req. No. 876.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City:

Please fill our order for the following and ship via — to Tiverton, R. I., one (1) cargo of about 700 tons of bituminous coal "Georges Creek".

(Per our letter of 6/16/14.)
June 18, 1914.

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

102 Atlantic Phosphate & Oil Corporation.

NEW YORK, July 2, 1914.

Order No. 1557.
Req. No. —.

M. Piedmont & Georges Creek Coal Co., 30 Church St., City:

Please fill our order for the following and ship via barge Rhode Island to Amagansett, L. I.

To 1439-00 tons Coal at $3.10	$4460.90
Towing & Trimming Charges	65.17
	$4526.07

(Per verbal agreement with our Purchasing Agent.)

ATLANTIC PHOSPHATE & OIL CORPORATION.
R. M. ROUND.

103 LIBELLANT'S EXHIBIT 2.

(Filed in Consolidated Cause #1359.)

Piedmont & Georges Creek Coal Co.

FROSTBURG, MD., September 11, 1914.

Atlantic Phosphate & Oil Corp., 165 Broadway, New York City.

GENTLEMEN: You being the present owners of the following boats:

Steamship "Herbert N. Edwards"
" "Rollin E. Mason"
" "Martin J. Marran"
" "Amagansett"
" "William D. Murray"

wish to say that we have charges against the above named boats amounting to $17,850.73, summarized as follows:

Steamship "Herbert N. Edwards" and owners, as per invoice #5057, dated May 19, 1914	$3,006.30
Steamship "Rollin E. Mason" and owners, as per invoice #5033, dated May 23, 1914	3,365.30
Steamship "Martin J. Marran" and owners, as per invoice #6004, dated June 9, 1914	3,724.31
Steamship "Amagansett" and owners, as per invoice #6026, dated June 20, 1914	3,228.75
Steamship "William D. Murray" and owners, as per invoice #7010, dated July 3, 1914	4,526.07
	$17,850.73

104 The date for payment of these bills is past due, and since the checks you furnished us in payment of same were sent through the banks for collection but returned protested for non-payment with the statement "not sufficient funds", we therefore beg to inquire how and when you expect to liquidate these accounts.

Upon the personal request of your Mr. Meadows, we have refrained from taking any legal action as a protection to these claims, but it has been currently rumored that other creditors have indicated their intention of so doing, and while we do not wish to be a party to any action that would prevent or hinder your desires in operating your floating equipment and plant to the end of the season, with the hope of a favorable turn of fortune, enabling you to bring good from what so many term uncertainty, still you surely realize that we are only a small concern and the loss of this account would completely ruin us and embarrass our friends, and for this reason we are compelled to use every available method within reason to protect ourselves, but before taking any action we shall await a letter from you explaining the true conditions, and what in your opinion would be a prudent step under the conditions to further protect us and our friends, as we must do something to assure them that these accounts are fully protected.

We would also appreciate very much if you would state whether our claim would take precedence over mortgage, and if there are other supply bills charged against boats and owners and the extent of same.

Your prompt reply will greatly oblige,

Yours truly,

PIEDMONT & GEORGE'S CREEK COAL CO.
J. S. BROPHY.

105 LIBELLANT'S EXHIBIT 3.

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Office, 165 Broadway.

NEW YORK, N. Y., Sept. 15, 1914.

Piedmont & Georges Creek Coal Company, Frostburg, Maryland.

GENTLEMEN: This will acknowledge your favor of the 11th relative to the bills which you have against our steamers for coal furnished us last season.

We fully appreciate your position and we doubly appreciate the extreme courtesy which you have shown us in carrying these bills as you have done. It will be our constant effort to reduce these bills as much as possible during the next few weeks. The cool weather which we have had for a week past has interrupted our operations temporarily, but the after effects of this weather are bound to be favorable, and we think you are going to be agreeably surprised with the progress which we make reducing your bills during the next three or four weeks.

We appreciate your refraining from taking legal action in the matter as the action which you would have to take against our steamers would surely result disastrously for the Company. Your interests cannot suffer by deferring action until the end of the season. Our understanding is that the bills against our steamers are preferred claims, ahead of the mortgage. Aside from the bills which you hold against the boats, Burns Bros. have claims of four or five thousand dollars, all told, spread over twelve or fifteen of
106 the boats, and there may possibly be two or three thousand dollars of other scattered claims against the steamers. We do not think that the total merchandise bills against our steamers, outside of your own, could possibly aggregate $10,000. You should take into consideration, of course, that the wages of the men on the steamers would have to be treated as a claim against the boat in case we should discontinue operations, before these payrolls are paid, but the total amount of wages against any one steamer would not exceed twelve to fifteen hundred dollars per month, and these we are keeping paid pretty promptly, as you know.

If there is any further information which we can give you in connection with this matter, please advise.

Yours very truly,

ATLANTIC PHOSPHATE & OIL CORPORATION.
T. C. MEADOWS, *Vice Pres.*

T. C. M/A.

107 LIBELLANT'S EXHIBIT 4.

(Filed in Consolidated Cause #1359.)

FROSTBURG, MD., March 9, 1915.

Atlantic Phosphate & Oil Corporation, New York City, To Piedmont and George's Creek Coal Co., Dr., Miners and Shippers of George's Creek-Cumberland Coal.

Payments due on or before the 15th of each month for Coal shipped the preceding month. After this date subject to sight draft.

Statement No. 1.

Date.	Boat.		Amount.	Total.
1913.				
July 30.	"Kingdom."	To 928-00 tons T/V@ $3.30 g. t. delivered to Promised Land.	$3,062.40	
Aug. 7.	"Frank Jenkins."	To 811-00 tons T/V@ $3.30 g. t. delivered to Promised Land. Bought 764 tons of the above from R. Nicoll & Company..	2,676.30	
Sept. 2.	"Kingdom."	To 899-00 tons T/V@ $3.30 g. t. delivered Promised Land....	2,966.70	
		To 27 tons Anthracite @ $5.75 delivered Promised Land....	155.25	
		To insurance on Anthracite coal 50c. per $100.00.....	.70	
			$8,861.35	$8,861.35
		Credits.		
Sept. 30.		By Cash.....	$500.00	
Oct. 25.		" Cash.....	1,500.00	
Nov. 18.		" Cash.....	2,500.00	
Dec. 19.		" Cash.....	161.35	
1914.				
Jan. 7.		" Cash.....	200.00	
108				
Feb. 9.		" Cash.....	200.00	
			$5,061.35	$5,061.35
				$3,800.00
Feb. 9.		By note secured by five $1,000 bonds par value $5,000.....	$3,800.00	
Aug. 25.		By Cash.....	$2,000.00	
		Balance with interest still standing.....	$1,800.00	

LIBELLANT'S EXHIBIT 5.

(Filed in Consolidated Cause #1359.)

FROSTBURG, MD., March 9, 1915.

Atlantic Phosphate & Oil Corporation, New York City, To Piedmont and George's Creek Coal Co., Dr., Miners and Shippers of George's Creek-Cumberland Coal.

Payments due on or before the 15th of each month for Coal shipped the preceding month. After this date subject to sight draft.

Statement No. 2.

Date. 1914.	Boat.		Amount.	Total.
Feb. 11.	"Crystal."	To 1083 tons Gas Coal @ $2.80 f. o. b. Port Reading	$3,032.40	Note.
		To Towing & Trimming charges	71.98	
Mar. 9.	"B. F. Mesick."	To 679-00 tons Gas Coal @ $2.80 f. o. b. Reading	1,901.20	Note.
		To Towing & Trimming charges	47.74	
May 2.	"Crystal."	To 1068-00 tons T/V @ $3.30 delivered to Promised Land	3.524.40	Cash.
May 12.	"Frank Jenkins."	To 705-00 tons T/V @ $3.40 delivered alongside Tiverton	2,397.00	Cash.
May 19.	"Harry Husted"	To 911-00 tons T/V @ $3.30 delivered to Promised Land	3,006.30	Charged to Boat "Herbert N. Edwards."
May 23.	"Crystal,"	To 922-00 tons Geo. Creek @ $3.65 del. Promised Land	3,365.30	Charged to Boat "Rollin E. Mason."
June 9.	"Rhode Island."	To 1187-00 tons Best Coal @ $3.10 f. o. b. St. George	3,679.70	Charged to Boat
		To Docking & Trimming charges	44.61	"Martin J.
		Loaded at St. George.		Marran."
June 20.	"H. Walker."	To 861-00 tons Best Coal @ $3.75 del. alongside Tiverton	3.228.75	Charged to Boat
		Loaded at St. George.		"Amagansett"
July 3.	"Rhode Island."	To 1439-00 tons Best Coal @ $3.10 f. o. b. Port Reading	4,460.90	
		To towing & trimming charges	65.17	Charged to Boat "Wm. B. Murray."
			$28,825.45	$28,825.45

Credits.

June 24.	By Cash (For Cargo of May 2)	$3.524.40	
July 10.	" " (For cargo of May 12)	2397.00	
			5,921.40
			$22,904.05
	Balance due from first three cargoes sold in 1913		1,800.00
	Interest and protest fees		36.11
	Total		$24.740.16

110 LIBELLANT'S EXHIBIT 6.

(Filed in Consolidated Cause #1359.)

JULY 31, 1914.

		Str. "Mason" Operating Acct.
7/5	36.25	tons of Coal
7/25	60	" " "
		Str. "East Hampton" Operating Acct.
7/5	23.75	tons of Coal
7/10	58	" " "
		Str. "Marran" Operating Acct.
7/5	32.5	tons of Coal
		Str. "Murray" Operating Acct.
7/19	38	tons of Coal
7/15	53	" " "
		Str. "Alaska" Operating Acct.
7/7	21.75	tons of Coal
7/19	27	" " "
		Str. "Ranger" Operating Acct.
7/7	21	tons of Coal
		Str. "Montauk" Operating Acct.
7/7	15.5	tons of Coal
7/28	14	" " "
		Str. "Strong" Operating Acct.
7/28	9.75	tons of Coal
Total	410-1/2 tons	

111 TIVERTON, R. I., July 31, 1914.

Sold to Tiverton Expense—Coal,
15.8 tons of Coal.

AUG. 27, 1914.

Bought of Atlantic Phosphate & Oil Corp., Tiverton, R. I.

		Str. "Montauk"
8/3	27	tons of Coal
		Str. "Rollin E. Mason"
8/20	22	tons of coal
8/23	17-1/4	tons of coal

		Str. "Ranger"
8/6	20-1/2	tons of coal
8/9	11-3/4	" " "
8/16	15-1/4	" " "
		Str. "George Curtiss"
8/6	20-1/2	tons of Coal
8/16	16	" " "
		Str. "William B. Murray"
8/6	27-3/4	tons of coal
		Str. "Alaska"
8/5	10-3/4	tons of coal
8/9	21,	" " "
8/30	15-3/4	" " "
112		
		Str. "Walter Adams"
8/5	22-1/4	tons of coal
		Str. "Nat Strong"
8/5	8-1/2	tons of coal
		Str. "Charles B. Sanford"
8/27	13	tons of coal
		Str. "East Hampton"
8/26	17	tons of coal
Total	286-1/4 tons	

TIVERTON, R. I., Aug. 31, 1914.

Sold to Tiverton Expense—Coal.
5 Tons of Coal.

TIVERTON, R. I. September 11, 1914.

		Str. "Rollin E. Mason"
9/2	17-1/2	tons of Coal
		Str. "East Hampton"
9/2	26-1/2	tons of Coal
113		
		Str. "Alaska"
9/4	17	tons of coal
		Str. "Martin J. Marran"
9/6	9-1/4	tons of Coal

		Str. "Adroit"
9/10	7	tons of Coal
		Str. "Ranger"
9/1	9	tons of Coal
9/11	7	" " "
Total	93¼	tons

114 CLAIMANT'S EXHIBIT 1.

(Filed in Consolidated Cause #1359.)

Contract.

30 CHURCH ST., NEW YORK, Feb. 13th, 1914.

The Piedmont & Georges Creek Coal Company of Frostburg, Md., and 30 Church Street, New York City, agrees to sell and the Atlantic Phosphate & Oil Corporation agrees to purchase cargo of Bituminous Coal at price of Two Dollars and eighty cents ($2.80) per gross ton, F. O. B. Boat, New York Harbor Loading Piers on the following terms of payment:

Five Months' Note to be executed from date at six per cent interest and to be secured by first mortgage bonds of the Atlantic Phosphate & Oil Corporation in the ratio of approximately Two Dollars in Bonds against One Dollar on the account; Note and Bonds to be taken up from the first advances account of operations i. e., such monies as are advanced by the Banks or Purchasing Companies when fishing operations start; money advances being customary on this class of business, and the above mentioned cargo being an advance of material necessary in the operation of the plant and steamers before any material can be produced; consequently a first lean, and will be handled and taken care of accordingly.

Signed in duplicate.

Accepted:

By S. J. BOHANNON,
For Piedmont & Georges Creek Coal Company.

Accepted:

By H. SICKLES,
Vice President for Atlantic Phosphate & Oil Corporation.

115 CLAIMANT'S EXHIBIT 7.

(Libellant's Exception noted)

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Offices 165 Broadway.

NEW YORK, N. Y. June 16, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

GENTLEMEN: We are just advised by our Tiverton plant that their supply of coal has been pretty well exhausted in starting the boats out and that they can use another cargo of about 700 tons whenever it suits your convenience to ship it to them. You may therefore consider this as an order for such a cargo when it is convenient for you to make the delivery.

Yours very truly,

ATLANTIC PHOSPHATE & OIL CORPORATION,
By T. C. MEADOW.

TCM/A.

116 CLAIMANT'S EXHIBIT 8.

(Libellant's Exception noted.)

(Filed in Consolidated Cause No. 1359.)

Piedmont & Georges Creek Coal Co.

NEW YORK CITY, May 28th, 1914.

Atlantic Phosphate & Oil Corporation, No. 165 Broadway, New York.

Attention Mr. T. C. Meadows.

GENTLEMEN: This is to confirm agreement for the furnishing of your coal requirements at Promise Land and Tiverton, for the current season, coal to be invoiced as follows:——

10,000 tons our best grade Georges Creek Cumberland Coal on basis of $3.10 gross ton, New York Loading Piers.

Balance of your requirements for this grade of fuel to be filled on basis of $3.05 gross ton, New York Loading Piers.

All the Piedmont, or our second grade of Georges Creek to be billed on basis of $2.75 gross ton, New York Loading Piers.

This is not a formal contract, but is as per the writer's understanding with you a few days ago.

Yours truly,

PIEDMONT & GEORGE'S CREEK COAL CO.
S. J. BOHANNON,
Manager Sales.

S. J. B/B. B.

117 CLAIMANT'S EXHIBIT 9.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause #1359.)

Atlantic Phosphate and Oil Corporation.

General Offices 165 Broadway,

NEW YORK, N. Y. May 28, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

Attention Mr. S. J. Bohannon, Manager of Sales.

GENTLEMEN: This will acknowledge your favor of the 28th, confirming our agreement relative to our requirements of coal at Promised Land, and Tiverton for the coming season.

The prices mentioned by you in this letter are in accordance with our understanding of the agreement and are satisfactory.

If at any time you wish a more formal contract than this letter we shall, of course be glad to supply it.

Yours very truly,

ATLANTIC PHOSPHATE & OIL CORPORATION,
By T. C. MEADOW.

T. C. M. A.

118 CLAIMANT'S EXHIBIT 10.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause #1359.)

NEW YORK CITY, August 24th, 1914.

Atlantic Phosphate & Oil Corp. 165 Broadway, New York.

DEAR SIRS: We beg to acknowledge receipt of sight draft on Proctor & Gamble Co., Cincinnati, O. for $2,000 against 8,000 gallons fish-oil loaded in tank car PGx-411, with bill of lading and bill attached, calling for $2,240 on Proforma No. 10.

Yours truly,

PIEDMONT & GEORGES CREEK COAL CO.
S. J. BOHANNON,
Manager Sales.

119 CLAIMANT'S EXHIBIT 11.

(Libellant's Exception Noted.)

(Filed in Consolidated Cause No. 1359.)

H. Brua Campbell, 37 Wall Street, New York.

To Atlantic Phosphate & Oil Corporation, 165 Broadway, New York City:

Take Notice, That the Piedmont & George's Creek Coal Company has a lien against personal property, now in its possession and belonging to your Company, of the following description:

$13,300 par value of Refunding Mortgage 20 Year Sinking Fund Gold Bonds of Atlantic Phosphate & Oil Corporation of the following numbers and denominations—5 bonds $1,000 each, Nos. M-890 to M-894 inclusive—5 bonds $1,000 each, Nos. M-961 to M-956 inclusive; 33 bonds $100 each Nos. C-262 to C-294 inclusive.

That such lien is based upon the pledge of the above enumerated bonds with said Coal Company by your Company as collateral security for certain promissory notes of your Company in favor of the Piedmont & George's Creek Coal Company as follows:

Promissory note, No. 748, dated September 24, 1914, for the sum of $2,020.92 due and payable to the order of the Piedmont & George's Creek Coal Company on October 26, 1914, with interest at
120 6% per annum, to which note there was attached $3,300 par value of the above bonds.

Promissory note, No. 782, dated October 14, 1914, for the sum of $3,800, due and payable to the order of Piedmont & George's Creek Coal Company on November 14, 1914, with interest at 6% per annum to which note there was attached $5,000 par value of the above bonds.

Promissory note, No. 781, dated October 14, 1914, for the sum of $3,032.40 due and payable to the order of Piedmont & George's Creek Coal Company on November 14, 1914, with interest at 6% per annum, to which note there was attached $5,000 par value of the above bonds.

That the above notes were given and the above-mentioned bonds pledged by your Company to secure to the Piedmont & George's Creek Coal Company payment of indebtedness incurred by your Company for coal furnished and delivered by said Coal Company to your Company.

That the par value of the bonds pledged as collateral security for said notes is the sum of $13,300.

That the aggregate principal amount of the above notes of your Company is the sum of $8,853.32. That of this amount the sum of $6,853.32 remains unpaid. That upon the maturity of said notes they were duly presented and payment demanded, and were duly protested upon payment being refused. That, in addition to said sum of $6,853.32, there is also due and owing, at the date of this

notice, interest on said notes at the rate of 6 per cent per annum, amounting to $103.89, making total amount of the lien claimed, at the date of this notice, the sum of $6,957.22.

You are hereby required to satisfy such lien and pay the amount thereof to the undersigned company on or before the 22nd day of January 1915.

121 If such lien is not satisfied and the amount thereof paid to the undersigned company on or before such date, the bonds above described will be sold by the undersigned company at public sale to the highest bidder at Exchange Salesroom, Nos. 14 & 16 Vessey St., New York City, on the 10th day of February, 1915, at 12.30 p. m., as provided by Article VII of the Lien Law of the State of New York.

Dated January 4, 1915.

THE PIEDMONT & GEORGES CREEK COAL CO.
By J. S. BROPHY,
Pres.,
Lienor.

STATE OF MARYLAND,
County of Allegany, To wit:

John S. Brophy, being duly sworn, deposes and says, that he is the president of the lienor Company named in the foregoing notice; that he has read such notice and knows the contents thereof; that the lien claimed therein on the personal property therein described is a valid one; that the debt upon which such lien is founded is due and no part thereof, except the sum of $2,000 has been paid; and that the facts stated in such notice are true to the best of his knowledge and belief.

J. S. BROPHY.

Subscribed and sworn to before me this 8th day of January, 1915.
PAUL L. HITCHINS,
Notary Public.

My Commission expires 1st Monday in May 1916.

122 *Stipulation as to Exhibits.*

(Filed in Consolidated Cause No. 1359.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12 may be omitted from the printed record on appeal, and that the originals be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimants.

123 District Court of the United States, District of Rhode Island.

Adm. 1335, 1333, 1334, 1327, 1329, Now Consolidated in Adm. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

The Fishing Steamers WILLIAM B. MURRAY, ROLLIN E. MASON, Herbert N. Edwards, Martin J. Marran, Amagansett, Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, Their Engines, Boats, etc.

(Filed in Consolidated Cause #1359.)

Opinion of the Court.

JANUARY 29, 1917.

BROWN, *J.*:

The Piedmont & Georges Creek Coal Co. seeks to establish maritime liens for coal supplied under contracts with the Atlantic Phosphate & Oil Corporation, which, in 1913 and 1914, was the owner of a fleet of nineteen fishing vessels, and of lands and fish factories at Promised Land, Long Island, and at Taverton, Rhode Island. All this property was mortgaged to the Astor Trust Co. of New York, as trustee, to secure an issue of bonds.

The coal was sent in five shipments; the first 911 tons, May 19, 1914; the second, 922 tons, May 23, 1914; the third, 1187 tons, June 9, 1914; and the fifth, 1439 tons, July 3, 1914, were all delivered at Promised Land. The fourth shipment, 861 tons,
124 June 20, 1914, was delivered at Tiverton, R. I. The invoices and manifests were, in each instance, made out to the Oil Corporation, and the name of no vessel belonging to the Oil Corporation was mentioned.

At the time of the delivery of the first shipment at Promised Land there were already in bins on the pier 1068 tons of coal which had been paid for, and the four cargoes were dumped on the same pile. Coal from these bins was used by the Oil Corporation both for the operation of its fleet of nineteen vessels and for running the boiler plant at Promised Land. The coal delivered at Tiverton, R. I., was unloaded on the pier, and subsequently was used in part by ten of the Oil Corporation's vessels and in part by the boiler plant on shore.

All of these deliveries were charged on the books of the Coal Company against the Oil Corporation, and there were no entries charging any of the coal against specific vessels.

The Act of June 23, 1910, Chapter 373, 36 Stats. 604, provides:

"That any person furnishing repairs, supplies or other necessaries, including the use of dry dock or marine railway to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or if a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

The principal question is whether the evidence shows that the Coal Company, libellant, was a "person furnishing supplies to a vessel," within the meaning of the statute.

The documentary evidence in the case,—the books of the Coal Company, the original invoices, etc.,—are in the ordinary
125 form which would be used in supplying coal to a purchaser at his dock or pier without regard to its subsequent use by the purchaser.

Defendant's exhibits 8 and 9 are as follows:

EXHIBIT 8.

NEW YORK CITY, May 28, 1914.

Atlantic Phosphate & Oil Corporation, No. 165 Broadway, New York.

Attention of Mr. T. C. Meadows.

GENTLEMEN: This is to confirm agreement for the furnishing of your coal requirements at Promised Land and Tiverton, for the current season, coal to be invoiced as follows:

10,000 tons our best grade Georges Creek Cumberland coal on basis of $3.10 gross ton, New York Loading Piers.

Balance of your requirements for this grade of fuel to be filled on basis of $3.05 gross ton, New York Loading Piers.

All the Piedmont, or our second grade of Georges Creek to be billed on basis of $2.75 gross ton, New York Loading Piers.

This is not a formal contract, but is as per the writer's understanding with you a few days ago.

Yours truly,

PIEDMONT & GEORGE'S CREEK COAL CO.
S. J. BOHANNON,
Manager Sales.

S. J. B./B. B.

126 EXHIBIT 9.

NEW YORK, N. Y., May 28, 1914.

Piedmont & Georges Creek Coal Company, 30 Church Street, City.

Attention Mr. S. J. Bohannon, Manager Sales.

GENTLEMEN: This will acknowledge your favor of the 28th, confirming our agreement relative to our requirements of coal at Promised Land and Tiverton for the coming season.

The prices mentioned by you in this letter are in accordance with our understanding of the agreement and are satisfactory.

If at any time you wish a more formal contract than this letter we shall, of course, be glad to supply it.

Yours very truly,

ATLANTIC PHOSPHATE & OIL CORPORATION,
By T. C. MEADOWS.

T. C. M./A.

These letters, which were intended as an informal memorandum of the agreement, contain no reference to the furnishing of coal for any particular use, and no reference to a lien.

Long after the five shipments had been delivered, and after checks for the same had been protested, legal proceedings against the Oil Corporation were threatened by the Coal Co., to avoid which it was agreed that the entire amount of coal furnished should be charged against the Oil Corporation's best five boats, as a security for the claim. The headings of the original invoices, in possession of the Oil Corporation, in which the charges were against the Oil Corporation, were torn off and new headings were pasted on charg-
127 ing coal to each of the five selected vessels and owners. This appears by libellant's exhibits: number 2 dated September 11, 1914, and number 3 dated September 15, 1914.

The intention of this arrangement was to give security upon five selected vessels for the coal already delivered to the owners.

There is nothing in the documentary evidence relating to prior dealings which, in terms shows a specific agreement for a maritime lien for these five shipments.

The Oil Corporation went into the hands of receivers in October, 1914, and the Coal Company filed petitions which were based upon the subsequent arrangement of September 1914 rather than upon the original agreement which preceded the delivery of the coal.

When the present case was brought on for hearing the libellant took the position that the parties, by agreement, might create a maritime lien on such of the vessels as they might select, irrespective of the amount of coal actually furnished to or used by these vessels. Upon expressions of doubt by the Court as to the soundness of this contention in point of law the libellant filed a libel against seven other vessels.

The case presented by the consolidated libels is much complicated by the artificial mode in which it is presented. Instead of giving a plain narration of fact the five original libels are artificially framed, and are based rather upon the agreement made for the prevention of litigation than upon the original agreement made for the furnishing of the coal. Oral testimony was presented at the hearing to the effect that as there was still a balance due for the previous year, and as the Oil Corporation was known to be largely indebted, an oral agreement was made that for coal furnished the Coal Company should have a maritime lien upon the entire fleet of the Oil Corporation.

128 I am of the opinion that the testimony shows that before the writing of the letters, Exhibits 8 and 9, the financial ability of the Oil Corporation to pay was discussed; and that it was understood by the contracting parties that the law would afford a lien upon the vessels for the coal, and that the Coal Company would thus have security. It was also understood by the parties that a large part of the coal furnished was to be used by vessels of the fleet.

The Statute of June 23, 1910 gives no authority for the creation of a maritime lien on vessels to which coal was not to be furnished. An agreement that certain vessels should be charged with the lien

for coal furnished to other vessels could have no effect to create a maritime lien which should take precedence of an existing mortgage. Even if the Coal Company expected that it was getting security upon the entire fleet irrespective of what use should be made of the coal, this was an erroneous conception of legal rights. However, it seems just to hold that the parties contracted in view of the fact that the statute afforded a right to a maritime lien, and that even of they misconceived the extent of this right or the mode of its enforcement, the libellant may be entitled to such a maritime lien as may arise under the statute upon the facts of the case.

That bills were made out and charges made to owners, or that notes were given, does not destroy the lien given by the act of June 23, 1910. The parties must be presumed to have contracted with so important a provision in mind; and though it might be a defense that the lien has been waived, we should require satisfactory and definite proof of such intention in order to deprive the libellant of such security as may be afforded by the statute.

As it appears from the testimony that the contract covering the coal in question was made at a time when it was known to
129 the libellant that the Oil Corporation was still in arrears for coal for the preceding year and was otherwise heavily indebted, and that receivership proceedings were contemplated, it is quite clear that the libellant had no intention to waive any of its rights to a maritime lien.

In the Patapsco, 13 Wall., 329, it was said concerning the condition of the company which owned a line of steamships, and which was hopelessly insolvent and was borrowing large sums on mortgage:

"It would be strange if the libellant did not know this condition of things, and, in the absence of proof on the subject, it is a reasonable inference that he did. If it had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished."

In the present case there is proof of the libellant's knowledge.

It may be said, therefore, that the parties contracted knowing that a large portion of the coal was to be used for a strictly maritime purpose, and in reference to such legal rights as existed under the United States statute.

As has been said, the theory of the libellant in filing his five original libels was that a contract for a lien on the fleet would permit the libellant to select any vessel for the enforcement of the entire lien, irrespective of the amount of coal furnished to that particular vessel.

The libellant cites The Freights of The Kate, et al., 53 Fed., 707; The Erastina, 50 Fed., 126; The Advance, 72 Fed., 793; The Patapsco, 13 Wall., 329; also the recent case of the John L. Lawrence, 231 Fed., 507. In the latter case the learned judge remarked:
130 "I can perceive no valid reason why, unless for some other cause, the libellants are deprived of a maritime lien, they may not have filed their libel upon each of the steamers for the entire amount and recovered the whole amount out of either of them."

Without considering this case in detail it may be observed that this dictum of the learned judge is not in accord with the decisions in this circuit.

In The Kearsarge, 1 Ware 546, Fed. Cs. No. 7634, upon a consideration of a lien statute of Maine, it was held by Judge Ware:

"If the owner is building two vessels at the same time, and materials are furnished generally for both, the material man has a lien on both the vessels, and may enforce it against either of them."

This case, on appeal, 2 Curtis 421, Fed. Cs. No. 7762, was reversed in an opinion by Mr. Justice Curtis, who said:

"I am unable to concur in so much of this opinion as holds that the statute gave a lien on both vessels for all the materials furnished, without regard to their use on one or the other. The statute in terms, for materials furnished for or on account of any vessel, gives the creditor a lien on such vessel for his materials. These terms do not give a lien on one vessel for materials furnished for or on account of another vessel, nor for and on account of it and another. The natural meaning of the words is, that for the price of materials furnished for a particular vessel, the creditor shall have a lien on that vessel. I do not think myself at liberty to give what is
131 called a liberal construction to these terms, so as to embrace in them a case they do not describe."

The language of the Maine statute,

"* * * or furnish materials for or on account of any vessel building or standing on the stocks, or under repairs, etc."

so far as the question before us is concerned, seems quite similar to the act of June 23, 1910.

The learned Justice also used the following language, which seems to be directly applicable to the case before us:

"At the same time, I think that where materials are furnished for two specific vessels, though the original contract does not appropriate them specifically to either, yet when they are afterwards appropriated, they may properly be considered as furnished for that vessel, in the construction of which they are used. The effect of such a contract is, to enable the builder to elect, to which of the two vessels he will appropriate them. When he has made that election and actually appropriated them or some part of them to one vessel, I can see no sound reason, why it may not be said with truth, that they were furnished for and on account of that vessel, and so, that the case is within the terms of the law."

This case was followed in Berwind-White Coal Mining Co. v. Metropolitan S. S. Co., 166 Fed., 784. Judge Putnam, considering a single contract for machinery for two steamers, The Harvard and The Yale, held that where there is a joint sale of materials a lien cannot be maintained on any one vessel for the entire ma-
132 terials furnished for both vessels; but said that this was not inconsistent with the allowing of a lien after ascertaining what benefit each steamer received under the contract:

"The underlying equity is that the lien is supported by the fact that the labor and materials have actually gone into the property on which the lien is claimed, and increased its value."

This case on appeal, American Trust Co., v. W. & A. Fletcher Co., Berwin-White Coal Mining Co. v. Same, 173 Fed., 471, was affirmed. Although the case was thoroughly contested by eminent counsel, experienced in the admiralty law, the ruling of the court below that the furnishing of the materials removed any uncertainty arising from the fact that the contract was joint, so far as an examination of the briefs in that case discloses, was not questioned on appeal. In the opinion on appeal, 173 Fed., 479, it was said also:

"The contract of construction was made with reference to the statute, and a verbal incorporation of the statute into the terms of the contract, expressing in the language of the parties that which the Legislature has declared to be the law, must be an empty formality."

I find, therefore, that in contracting for this coal it was understood by both parties that it was to be principally used for strictly maritime purposes; that a large part of it was used for such purposes; and that the parties contracted in view of statutory rights to a lien.

It may be argued that when coal is delivered to bins on the wharf of a purchaser, who may use it as he pleases, on such of his ships as he may select, or upon land if he prefers, that the coal is
133 furnished to the owner and not to a vessel. But such an argument upon the evidence in this case ignores the material fact that it was understood by both parties that the coal was procured and supplied largely for uses which were strictly maritime. Doubtless a very substantial part of the inducement to the Coal Company to supply the coal was its knowledge of its intended use, by vessels, for maritime purposes, and its understanding that the law gave it a lien for coal supplied for such purposes. Upon the facts in this case it is most improbable that the coal would have been supplied to the owner and upon the owner's very doubtful credit.

I find that it was furnished because it was destined and intended to be used, in large part, by vessels; and that in the sense of the statute it was therefore furnished to vessels upon the faith of a lien thereon, and not to the owner.

The ultimate destination to vessels, and the use by vessels, being a material consideration, contemplated by both parties, it would be most unjust to the libellant to hold that it furnished the coal to the owner and only on the owner's credit. The mere fact that the names of the particular vessels to receive particular shipments of coal were unknown I cannot regard as material. The Oil Corporation was known to be the owner of a fleet of vessels, and it was known that these vessels would call from time to time at the Oil Corporation's wharves for their coal. That is sufficiently certain which, in the due course of the contemplated supply of coal to the fleet, would be made certain.

The subsequent appropriation of the coal to particular vessels by the owner being in pursuance of what was intended by both parties, logically relates to the question whether the coal was furnished by the libellant to a vessel. The course of the business of the owner's fishing fleet selected and made certain which of the vessels should receive the benefit of the libellant's coal and become subject to

134 a maritime lien corresponding to the benefit received. A contract to provide coal for such vessel of a fleet as might first arrive in port, and the delivery of coal ready at the owner's wharf for such vessel, would become definite on the arrival of the first vessel of the fleet.

As supplies for fleets of vessels under a common ownership and management in the ordinary course of business are contracted for in view of the general requirements of the entire fleet; as supply men will thus be called upon to furnish supplies in advance of the arrival of the vessels; as, at the time supplies are ordered, there may be uncertainty as to which vessel may require them and use them; the statute should receive a construction which will make it applicable to and consistent with modern business conditions. A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who is told the name of the vessel which is to require the supplies.

The appropriation of the coal to a particular vessel, though made by the owner, yet if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a "furnishing" by the libellant to "a vessel," which is identified by the act of the owner in placing the coal abroad.

Cases which hold that supplies may be furnished to a vessel through not actually incorporated in or used by the vessel have no bearing in this case. While use and appropriation may not, in all cases, be necessary to make out a case of furnishing to a vessel, it does not follow that they may not afford conclusive evidence of the identity of a vessel and of the completion of a maritime lien thereon.

But the question of the effect of an appropriation to a particular vessel I regard as settled by the decisions of Mr. Justice Curtis,
135 and Judge Putnam, heretofore cited. In these cases it was at the outset uncertain which of two vessels might receive the supplies. In the present case it was uncertain which vessels of a fleet might receive them; but in this case, as in the cases cited, the uncertainty ended upon the owner's appropriation of the coal to special vessels.

Following the decisions of Justice Curtis in The Kearsarge, 2 Curtis 421, Fed. Cs. No. 7788, and of Judge Putnam in Berwind-White Coal Mining Co. v. Metropolitan S. S. Co., 166 Fed., 784, I am of the opinion that for such coal as actually went into any vessels of the fleet the libellant is entitled to a maritime lien, upon such vessel; but that there can be no lien upon one vessel for coal supplies to another vessel. See also The Yankee, 233 Fed., 917, 927.

According to the evidence of Mr. Milligan, manager at Tiverton, out of the entire fourth shipment of 861 tons, 790 tons were thus received by vessels of the fleet; and a record was kept of the amounts received by the respective vessels. The agreed price was $3.75 per ton.

There were shipped to Promised Land 4,459 tons of coal, at an average price of $3.28 per ton. Vessels of the fleet received from bins at Promised Land 3,568 tons, and a record is presented of the

amounts received by particular vessels. Some uncertainty arises, however, from the fact that the 3,568 tons were taken from bins at Promised Land which contained not only the 4,459 tons of coal furnished under the contract, and for convenience called by counsel "lien coal," but also 1,068 tons of coal that had been paid for. The entire amount of coal on hand was,

4,459 tons lien coal, so called.
1,068 tons non-lien coal

5,527 tons.

If we should deduct from the 3,568 tons received by the vessels the whole amount of 1,068 tons of non-lien coal, it would follow
136 with mathematical certainty that 2,500 tons of lien coal were used by vessels of the fleet. Upon this view of the case it would seem that there should be deducted from the amounts furnished each steamer at Promised Land a part of 1,068 tons proportionate to the whole amount received by a particular vessel. But it hardly is just to assume that all of the 1,068 tons of non-lien coal went to the vessels. The confusion of lien coal and non-lien coal cannot be treated in the same light as a confusion of goods by a tort feasor, against whom every assumption will be made. The Idaho, 93 U. S., 575, 585.

The proportion of non-lien coal, 1,068, to the whole amount in the bins, 5,527, is less than one-fifth. For practical purposes a deduction of .20 from the amount received by each ship would seem to give a result that would be fair, and as accurate as the nature of the case admits.

I am of the opinion that the libellant is entitled to liens upon the respective vessels, the amount thereof to be determined upon the principles above stated. Any objection to the mode of computation, or to the accuracy of the figures may be heard upon the settlement of the terms of the decree.

There remains a question as to the application of payment to the Coal Company of the sum of $2,000., made on or about August 24, 1914.

At this time the Coal Company held notes of the Oil Corporation that were not yet due. The book account for the five shipments of coal for which a lien is now claimed was then due. After the receivership of October 19, 1914, this payment was credited upon one of the notes, which had been renewed after the receipt of the check for $2,000.

To so credit the amount after the receivership would result in prejudice to the mortgagee by subjecting the property to a maritime lien to the amount of about $2,000.

I am of the opinion that this payment should be applied to
137 the open account rather than to the notes not due at the time of payment, and that the claim for maritime liens must be reduced by the amount of the payment of August 24, 1914; either by a pro rata reduction or by the extinguishment of the claims upon certain vessels, as shall hereafter be determined.

Counsel for the libellant may present a draft decree, within twenty days, in accordance with the above opinion; and objections to and corrections thereof may be filed within ten days thereafter.

138 *Claimants' Objections to Draft Decree Filed by the Libellant.*

(Filed in Consolidated Cause #1359—July 9, 1917.)

Now comes the claimants in the above entitled cause and file their objections to the draft decree filed by counsel for the libellant.

1. Because no credit has been given or allowed in the said draft decree for the payment of $2,000 made by the Atlantic Phosphate & Oil Corporation to said libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of maritime liens on several vessels li-eled in said cause, in accordance with the opinion of this court in said cause filed January 29, 1917.

2. Because said payment of $2,000 is applied "in reduction of the open account due and unpaid for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the libellant has been unable to trace to the vessels, and for which it has no security."

3. Because the statement made on page 2 of said decree and elsewhere that it is unable to trace 891.8 tons of coal delivered at Promised Land and that the same is "left unaccounted for," whereas the said coal can be traced and is accounted for as being used by the claimants' plant at said place as appears in the opinion of this court in said cause filed January 29, 1917.

By their Proctors,

GARDNER PIRCE & THORNLEY.

139 District Court of the United States, District of Rhode Island.

Adm. 1335, 1333, 1334, 1327, 1329.

Now Consolidated in Adm. 1359.

PIEDMONT & GEORGES CREEK COAL COMPANY

v.

THE FISHING STEAMERS WILLIAM B. MURRAY, ROLLIN E. MASON, Herbert N. Edwards, Martin J. Marran, Amagansett, Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, Their Engines, Boats, etc.

Opinion of Court.

July 10, 1917.

(Filed in Consolidated Cause #1359.)

BROWN, *J.*:

Upon hearing for the settlement of a decree the question arises whether the sum of $2,000, should be applied in reduction of the maritime liens.

In the opinion filed January 29, 1917, it was said that

"This payment should be applied to the open account rather than to the notes not due at the time of payment."

The libellant now shows that the open account on August 24, 1914, the date of payment of the sum of $2,000., exceeding the maritime liens on the vessels now libelled, and possibly liens on other
140 vessels not libelled, by the amount of $5,529.32. This was unsecured and was due, whereas the notes referred to in the opinion were for coal previously furnished, and were not due. Under these circumstances I am of the opinion that the libellant, under the ordinary rule, had the right to apply the payment to the unsecured open account; and as after this application there still remains a balance of $3,529.32 on open account not secured by maritime liens or otherwise, this application does not have the effect of reducing the amount of the maritime liens for coal furnished to these vessels.

Final Decree.

(Filed in Consolidated Cause No. 1359—July 10, 1917.)

This cause having been consolidated with the Admiralty causes against the fishing steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett, No. 1329, and Rollin E. Mason, No. 1333, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

141 It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land,	4,459 tons, value of..	$14,625.52
1 cargo coal at Tiverton, R. I.,	861 tons, value of..	3,228.75
Total	5,320 tons, value of..	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

To all steamers mentioned in the consolidated Libels,

		tons		value
From Promised Land 2,778, less 20%		2,222.4	@ 3.28	$7,289.45
To all steamers mentioned in the consolidated Libels,				
From Tiverton		626.5	@ 3.75	$2,349.39
		2,848.9	tons ..	$9,638.84

To the following vessels not yet libelled:

From Promised Land—				
Str. Portland	148			
Str. Strong	157			
Str. Sanford	3			
Str. East Hampton	482 790. less 20%	632.	@ 3.28	$2,072.96
From Tiverton—				
Str. East Hampton	125.25			
Str. Strong	18.25			
Str. Sanford	13.			
Str. Adroit	7.	163.5	@ 3.75	$613.12
		795.5		$2,686.08

142 That there was used by the factory at Promised Land
891. less 20% 712.8 @ 3.28..... $2,337.98
By the factory at Tiverton 71. @ 3.75..... 266.25

This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it
891.8 @ 3.28.. 2,925.10 $5,529.30
Total cargoes, 5,320 tons, value..... $17,854.23

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to..... 4,459 tons

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to..... 1,068 tons

Total ..... 5,527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered adjudged and Decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and which had been paid for at the time that the respective vessels re-

ceived all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant
143 was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5,529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore Ordered, Adjudged and Decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2,000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

And it is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Walter Adams, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

79.2 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$259.78
and also 22.25 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to.....	83.44
or the total sum of	$343.22
and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $343.22, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of...	60.07
or a total amount of.....	$403.29

144 It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Alaska, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

243.2 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$797.70
and also 113.25 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to.....	424.69
or the total sum of.....	$1,222.39

and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1,222.-39, together with interest thereon, from August 1, 1914, to July 1, 1917, amounting to the further sum of 213.9

or a total amount of..... $1,436.3

It is further Ordered, Adjudged and Decreed by the Court th the Libellant, the Piedmont & Georges Creek Coal Company, di provide and furnish to the fishing steamer Arizona, after all credi have been given and decuctions made in accordance with the Opinio heretofore filed in this case—

28 tons of coal, at Promised Land, Long Island, of the value of $3.28 per ton, amounting to..... $91.8

and that said libellant is justly entitled to have and rerecover from said fishing steamer sad sum of $643,- together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of.. 16.0

or a total amount of..... $107.9

145 It is further Ordered, Adjudged and Decreed by the Cour that the Libellant, the Piedmont & Georges Creek Coal Com pany, did provide and furnish to the fishing steamer George Curtis after all credits have been given and deductions made in accordanc with the Opinion heretofore filed in this case—

154.4 tons of coal at Promised Land, Long Island, and of the value of $3.28 per ton, amounting to..... $506.4

also 36.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to..... 136.8

or the total sum of..... $643.3

and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $643.-31, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of 112.5

or the total amount of..... $755.8

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Montauk, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

96.8 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton amounting to..... $317.50

and also 56.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to	211.88
or the total sum of	$529.38
and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $529.38, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of	92.64
or the total amount of	$622.02

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Quickstep, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case——

15.2 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$49.86
and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $49.86, together with interest thereon from August 1, 1914, to July 1, 1917, amounting to the further sum of	8.73
or the total amount of	$58.59

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Ranger, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case——

202.4 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$663.87 $663.87
and 84.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to	316.88
or the total sum of	$980.75
147 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $980.75, together with interest thereon from August 1, 1914, to April 1, 1917, amounting to the further sum of	171.63
or the total amount of	$1,152.38
The total amount due from all of said steamers amounting to	$4,536.39
together with costs as taxed, amounting to the sum of	131.35
Total	$4,667.74

and it further appearing that said fishing steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger were released in this cause upon the filing of a bond in the sum of Nineteen Thousand Dollars by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company of Missouri, as obligors: It is further Ordered, Adjudged and Decreed that the Libellant recover against the saiad Claimant and its surety said sums as aforesaid of principal, interest and costs, together making the sum of Forty-six Hundred and sixty-seven and 74/100 Dollars ($4,667.74), hereinbefore decreed against the said fishing steamers, respectively; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further Ordered Adjudged and Decreed that unless an appeal be taken from this decree on or before August 1, 1917,
148 the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered July 10, 1917.
ARTHUR L. BROWN, *J.*

Entered as Decree of Court this 10 day of July, —— A. D., 1917.
THOMAS HOPE.

Libellant's Motion to Reopen Case for the Introduction of Further Testimony.

(Filed in Consolidated Cause #1359—September 29, 1917.)

Respectfully represents the Libellant in the above entitled case that it has just come to its knowledge that there has been a mistake or misunderstanding in relation to the amount of coal that was used by each of the steamers coaling at Promised Land, as shown by the testimony and stipulations on file in this case, in this:

That counsel, and it is believed the Court labored under the impression that the amount of coal testified to as having been the amount of coal that was used by these steamers from Promised Land, was the entire amount of coal which could be accounted for against all the steamers coaling at Promised Land, not only from the 1,068 tons which was on hand in steamer pockets, but the 4,459 tons in addition, whereas in truth and in fact, the steamers coaling at Promised Land had been credited with 1,068 tons of coal prior to any charge being made against them for any coal contained in these four cargoes, and that the amount of coal testified to in Court as having been used by the steamers respectively, was actually
149 the amount of coal used by the steamers after 1,068 tons used by them had been proportionately deducted from their total coal consumption, and consequently that the decision of the Court to deduct from the figures 20% of the amount of coal used by them, respectively, because there were 1,068 tons on hand when they began to use coal from these four cargoes, is a mistake and an error, since said amount of 1,068 tons had already been deducted from their consumption.

Wherefore, Libellant moves that said case may be reopened for the production, if necessary, of testimony disclosing the above facts, and that the opinion and decree herein may be corrected and reformed, and that all other matters stand until further order of the Court.

By its Proctor, FRANK HEALY.

I, Frank Healy, proctor for the libellant, do hereby certify that the facts and statements of the foregoing motion are true to the best of my knowledge, information and belief and that the facts disclosed therein have only recently come to the knowledge of the libellant and this motion is not filed for delay.

(Signed) FRANK HEALY.

Subscribed and sworn to before me this 19th day of September, A. D. 1917.

THOMAS CURRAN.

150 *Petition for Subpœna Duces Tecum Filed by Libellant.*

(Filed in Consolidated Cause #1359—Oct. 12, 1917.)

Respectfully Represents your petitioner that there is now on file a motion to reopen said cases for the reasons and causes stated therein.

That it is necessary to produce in support of said motion the testimony of C. R. Horton, Esquire, of Amagansett, Long Island, with the books and papers showing the distribution of the coal to the steamers in question from the cargoes in question, as set forth in said petition.

That said C. R. Horton resides without the District of Rhode Island but within one hundred miles.

Therefore your petitioner respectfully prays that a subpœna duces tecum will be ordered directed to the C. R. Horton to be and appear before this court on the 19th day of October, A. D., 1917 and have there with him all the books and records showing the distribution of the four cargoes of coal from the said vessel mentioned to the fishing steamers of the Atlantic Phosphate & Oil Corporation now on file in this case.

(Signed) PIEDMONT & GEORGES CREEK COAL CO.

By its Proctor, FRANK HEALY.

Subpœna duces tecum issued and returnable October 19, 1917.

(Signed) ARTHUR L. BROWN,
October 12, 1917.

151 *Subpœna Duces Tecum.*

(Filed in Consolidated Cause #1359.)

The President of the United States of America to C. R. Horton, Amagansett, Long Island, N. Y.

We command that laying aside all manner of business whatsoever

you personally appear before our said court to be holden at Rhode Island at ten o'clock in the forenoon, then and there to testify all and singular those matters and things which you shall know in a certain action in the said court and undetermined between the Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams et al Admr. 1359 and that you have with you books, records and documents containing the record of the distribution of coal from Promised Land to the fishing steamers belonging to the Atlantic Phosphate & Oil Company during the season of 1914 from the four cargoes at Promised Land under bills of laden dated respectively May 19, 1914 nine hundred and eleven tons, May 23, 1914 nine hundred and twenty-three, June 9, 1914 nine hundred seventeen tons, and July 3, 1914 fourteen hundred and twenty-nine tons.

Hereof fail not, as you will answer to said court under the penalty of court provided.

Witness: Arthur L. Brown Judge, this 12th day of October, 1917.

THOMAS HOPE,
Clerk.

152 *Officer's Return as to Service of Subpœna Duces Tecum.*

(Filed in Consolidated Cause #1359.)

STATE OF NEW YORK,
County of New York, ss:

Henry W. Nichols being duly sworn says:

That on the 18th day of October, 1917 he served the annexed subpœna duces tecum personally on Charles R. Horton, the person therein named as witness at the Seaboard Fisheries Company, Inc., docks at Long Island therewith explaining to him the said subpœna duces tecum and delivering to him a copy thereof.

(Signed) HENRY W. NICHOLS.

Sworn to before me this — day of October, A. D., 1917.

(Signed) ALICE E. BRENNAN.

New York County 493,
New York Register No. [SEAL.]

Expenses.

Transportation New York to Promised Land railroad and automobile	$13.50
Misc.	2.00
Service	2.00
	$17.50

153 *Testimony.*

Testimony in Support of the Motion filed by the libellant to Reopen the Case on account of error and mistake. (Testimony taken on Oct. 19, 1917 in Consolidated Cause #1359.)

Before Arthur L. Brown, Judge.

Appearances:

For the Libellant, Frank Healy, Esq.
For the Respondent, Gardner, Pirce & Thornley: Charles R. Haslam, Esq.

It is stipulated by and between counsel that the testimony given in this case may be used with like effect, as if given in each of the cases, against the Steamers—Edwards, Mason, Marran, Amagansett and Murray.

CHARLES R. HORTON is called in support of the motion and, having been duly sworn, testifies as follows:

Mr. Haslam: Before any testimony is taken I wish to have it appear on the record that I object to the reopening of this case at this time, your Honor.

By the Court: This is only in support of the motion I understand.

Mr. Healy: That is all. It is not reopened unless your Honor shall see fit to reopen it after——

Mr. Haslam: It is simply a motion to reopen, that is——

154 Mr. Healy: Yes, that is all. I understood your Honor would not reopen on the affidavit given by me on information and belief.

Mr. Haslam: I understood, also your Honor, that after he has offered evidence in support of this motion to reopen the case, your Honor would be affected by the documentary evidence?

By the Court: Yes.

Mr. Haslam: And in your testimony by Mr. Horton, any explanation or changing his former testimony in the case——

Mr. Healy: I don't want to go as far as that. The documentary evidence is to support Mr. Horton.

By the Court: You may proceed.

Mr. Haslam: That is what I understood.

By the Court: You may proceed in support of the motion.

Direct examination by Mr. Healy:

Q. 1. Mr. Horton, what position did you hold at the time of the failure of the—at the time the Atlantic Phosphate & Oil Corporation went into the hands of a Receiver?

Ans. Bookkeeper and cashier.

Q. 2. Bookeeper and cashier, where?

Ans. Promised Land, Long Island.

Q. 3. As bookeeper and cashier did you have charge of the books in relation to the coal that was distributed to the Steamers at Promised Land.

Ans. I did.

Q. 4. Have you got them here with you showing, the distribution of coal that was made to the Steamers at Promised Land during that season?

Ans. I have.

155 Q. 5. Were you employed by the receivers at Promised Land after the failure?

Ans. I was.

Q. 6. Did you, while employed at Promised Land, make a statement for the receivers in relation to the distribution of coal to those Steamers from four cargoes furnished by the George's Creek Coal Company?

Mr. Haslam: I object, I don't see that this has——

By the Court: That is only preliminary.

Mr. Haslam: It is not material for the——

Mr. Healy: I am not going to show the value; I simply want to show where the coal went.

Mr. Haslam: My point is this, it seems to me it should be shown on the books kept by this man, not by a letter which he may have sent, on request by the receivers after the failure took place.

By the Court: This is to reopen the previous case, as I understand.

Mr. Haslam: This refers, your Honor, to another matter. This paper was offered, or suggested——

Mr. Healy: Never was offered, never suggested——

Mr. Haslam: Which was referred to——

Mr. Healy: Never was referred to.

Mr. Haslam: Then I am misinformed.

Mr. Healy: You are misinformed.

By the Court: This is all on the motion, that is all. Proceed.

Ans. I did.

(By Mr. Healy:)

Q. 7. Was that statement, prepared from the books, showing the distribution of coal to these Steamers?

Ans. It was.

156 Q. 8. Are those books, from which you prepared that statement, here—here in court now?

Ans. They are.

Q. 9. Will you produce them?

Ans. (Witness complies with request of counsel.)

Q. 10. Mr. Horton, you also testified in this case at the hearing?

Ans. I did.

Q. 11. And did you, or not, give the same testimony at the hearing that you gave to the receivers as to the amount of coal that was used on these four cargoes?

Ans. I did.

Q. 12. Referring to your testimony on page 62 of the record in which you testified, in answer to a question by Mr. Woolsey:

"What have you got there—referring to the Steamer Herbert N. Edwards?

"Herbert N. Edwards—424 tons."

Will you examine your records and tell the Court what you meant, as shown by your records, by "424 tons"?

Ans. I meant that the 424 tons was the amount of coal chargeable to the four cargoes in question, to the Steamer Herbert N. Edwards.

Q. 13. In the testimony which you gave in court you testified also that, at the time the first cargo of coal, of these four cargoes, came to Promised Land there was on hand, of steamer coal, 1,068 tons: Do you remember that?

Ans. I don't remember that I testified that. That is a fact.

Q. 14. Does the records show that 1,068 tons of coal was there at that time?

Ans. Yes, sir.

Q. 15. And that the first of the cargoes of coal was mixed with that 1,068 tons?

157 Ans. Yes, sir.

Q. 16. Were you asked, at any time in that hearing, whether or not any deduction whatever had been—was made of that 1,068 tons by you?

Mr. Haslam: I object. We have the record. Just what is shown, I think——

Mr. Healy: All right, strike it out.

Mr. Haslam: I understood your Honor to say that this man was to testify from the books. Now he is not testifying from his books. The testimony he just gave was from a paper, not from his books.

(By Mr. Healy:)

Q. 17. The memorandum or paper that you have got there—is it taken right from the books that are on your knee?

Ans. They are.

Q. 18. Did you arrive at the amount of 421 tons for the Steamer Herbert N. Edwards as the amount that was used out of the four cargoes after you had taken into account as given by the books in your lap the fact that there was 1,068 tons of steamer coal there before you began to compute?

Ans. I did.

Mr. Haslam: I would like to know just what the witness is basing his testimony on. I would like, Mr. Healy, this man to take the books of original record, and have this man point out just where it is shown on this book that they have made any allowance for that 1,068 tons.

Mr. Healy: All right, I will do that.

Q. 19. Will you turn over to your books?

Ans. (Witness complies with the request of counsel.)

158 Q. 20. Will you take the Steamer Herbert N. Edwards—the coal that was shown to be used by the Steamer Herbert N. Edwards?

By the Court: Let me see how the accounts are kept.
(The Court and witness look over the accounts.)

(By Mr. Healy:)

Q. 21. Now, have you got the original record there of the distribution of coal, or the consumption of coal by the Steamer Herbert N. Edwards?

Ans. I have.

Q. 2. Taken during the month of June: What was the amount of coal that was consumed, or taken from the coal pile by the Steamer Herbert N. Edwards?

Ans. 181 89/100.

Q. 23. Did you, in making up the statement of 424 tons, allow in that statement that amount that you have just stated, or did you make any deduction from it?

Ans. I did not.

Q. 24. How much did you allow?

Ans. I allowed the proportionate amount that was used in June against all the steamers to make up for the cargo that was on the dock at the time—the first cargo that was on the dock—1,068 tons.

Q. 25. That is, out of the consumption of coal by the Steamer Edwards in the month of June, you took that proportionate amount of the 1,068 tons—out of the consumption of coal by that vessel?

Ans. I do.

Q. 26. How much did it amount to?

Ans. 104 tons.

Q. 27. So that to make the statement, for the receivers, of the consumption of coal by the Steamer Herbert N. Edwards, as
159 424 tons—her total consumption would have been 104 tons more, would it not?

Ans. It would.

Mr. Haslam: Just a moment: 104 tons more than 181——

Ans. 104 tons more than 424 tons—of the first cargo out of the dock, which he took.

(By Mr. Healy:)

Q. 28. Take the Steamer Adams: What was the consumption of the Steamer Adams during the month of June?

Mr. Haslam: Why not get through with the Edwards, first—follow that out.

Mr. Healy: I have finished the Edwards—(To Witness:)

Q. 29. What was the total consumption of coal they have got—after you added in what was in the bin?

Ans. The total amount of coal against the Edwards, after deducting the 104 tons, 424 tons.

Q. 30. Was that the figure that you testified to in court?

Ans. It was.

Mr. Healy: Now that covers the entire consumption of coal on the Edwards.

Mr. Haslam: No, he has not shown, from his books yet, what was used by the Edwards.

By the Court: Show first how much coal was charged against the Edwards.

Mr. Healy: He has not done it in the way you suggest but he has done it in this way: He is supposed to have kept account of all the coal that was used by the different vessels.

160 The Witness: Yes.

By the Court: Then did he make a report subsequently for the receivers?

Mr. Healy: Yes.

Q. 31. Now, then, what is the consumption of coal by the Steamer Edwards, during that month, of the five cargoes of coal?

By the Court: As appears on your books.

Mr. Healy: —as appears on your books—all the coal that was used from those five cargoes——

By the Court: Not five cargoes—four cargoes.

Mr. Healy: —by the Edwards?

Ans. 181 89/100 tons.

Q. 32. Can't you give me the total?

Ans. Up until the first of September 487½ tons; and then in September, I took the proportionate amount of coal that was used in September up to 262 tons, that was still on hand the first day of September.

Q. 33. And in making this proportion what did you make the total amount of coal that was used from those five cargoes?

Ans. I don't understand you, Mr. Healy.

Q. 34. What did it make the total consumption of coal from those five cargoes by the Edwards?

By the Court: That is not five cargoes; that is four cargoes and——

Mr. Healy: —1,068 tons and the four cargoes in question.

Ans. 528 tons.

161 Q. 35. Now, what did you deduct from that 528 tons on account of the 1,068 tons that were in the bins when the steamer coal began to come there from these four cargoes?

Ans. 104 tons.

Q. 36. And when was the 104 tons deducted from the total consumption of coal?

Ans. During the month of June.

Mr. Healy: Does that cover what you want, Mr. Haslam?

By the Court: What did you make your deduction on—you didn't make it on the books?

Ans. I had 1,068 tons of coal, your Honor that had landed first, and you have 1,068 tons which was charged out—we call that the first cargo of coal. The receivers wrote me to give them a list of the

coal where it was used from these four cargoes, and I deducted 1,068 tons out and sent them a list, with the first, of how the amount—to make up these four barge loads, to figure out where it was used, taking into consideration the 1,068 tons had already been charged out.

By the Court: How did you happen to do that—take out 1,068 tons?

Ans. Why, the day I was asked to give an account of the four cargoes—the only correct way to do it would be to take the coal that was on the dock before that was landed. I made a proportion, the same as if you had $100 in the bank, and afterwards deposited $500 more, you would make a consideration the first $100 you withdrew was out of the first $100 you put in the bank.

By the Court: Go on, Mr. Healy.

162 (By Mr. Healy:)

Q. 37. So much for the Edwards. Now take the Steamer Adams: What was the entire consumption of coal by the Steamer Adams from these five cargoes——

By the Court: Do not say "five cargoes"—"four cargoes" and——

(By Mr. Healy:)

Q. 37. —of four cargoes and 1,068 tons of coal—the four cargoes and the 1,068 tons of coal, what was the total amount?

Ans. 127 tons.

Q. 38. Now, in the testimony that you gave to the receivers, or the information you gave the receivers, was any deduction made from that 127 on account of this 1,068 tons?

Ans. There was.

Q. 39. How much was deducted?

Ans. 28 tons.

Q. 40. Was that the proportion of the 1,068 tons which the consumption of the Adams bore to all of the coal?

Ans. It was.

Q. 41. Now, will you take the Alaska? What was her consumption of coal from the four cargoes and 1,068 tons that was there?

Ans. 398 tons.

Q. 42. Did you take anything from that 398 tons on account of the fact that there was 1,068 tons on the dock.

Ans. I did.

Q. 43. How much did you take out?

Ans. 94 tons.

Q. 44. The Amagansett: What was her total consumption of coal from the four cargoes and 1,068 tons?

Ans. 625 tons.

163 Q. 45. What did you deduct on account of the 1,068 tons that was there on the dock?

Ans. 133 tons.

Q. 46. The Arizona: What was her total consumption of coal from the four cargoes and 1,068 tons?

Ans. 54 tons.
Q. 47. And what did you deduct on account of the 1,068 tons that was there on the dock?
Ans. 19 tons.
Q. 48. The Curtiss?
Ans. 236 tons.
Q. 49. What did you deduct?
Ans. 43 tons.
Q. 50. Which left, how much?
Ans. 193 tons.
Q. 51. The East Hampton?
Ans. 646 tons.
Q. 52. What did you deduct from her on account of the amount of coal on the dock?
Ans. 164 tons.
Q. 53. Leaving the amount chargeable to the East Hampton, from the four cargoes and the 1,068 tons, how much?

Mr. Haslam: Is the East Hampton connected with this libel?
Mr. Healy: No; that makes no difference.
By the Court: He is showing where this coal went to.

Ans. 482 tons.
Q. 54. The Herbert N. Edwards?
Ans. 528 tons.
Q. 56. What did you deduct from that?
Ans. 104 tons.
164 Q. 57. Leaving the amount supplied from these four cargoes?
Ans. 424 tons.
Q. 58. The Marran?
Ans. 318 tons.
Q. 59. And on account of the coal that was already on the dock, what did you deduct from that amount?
Ans. 67 tons.
Q. 60. That left chargeable to the four cargoes?
Ans. 251 tons.
Q. 61. And the Montauk—or Mason, rather?
Ans. 399 tons.
Q. 62. What was deducted on account of the coal that was already on the dock?
Ans. 100 tons.
Q. 63. Leaving the amount furnished from these four cargoes?
Ans. 299 tons.
Q. 64. Montauk?
Ans. 149 tons.
Q. 65. What did you deduct on account of the 1,068 tons?
Ans. 28 tons.
Q. 66. Leaving the amount chargeable to the four cargoes?
Ans. 121 tons.
Q. 67. The Murray?
Ans. 410 tons.

Q. 68. And deducted on account of the 1,068 tons?
Ans. 122 tons.
Q. 69. Leaving the amount furnished from the four cargoes?
Ans. 288 tons.
Q. 70. Portland?
Ans. 189 tons.
165 Q. 71. And deducted on account of the 1,068 tons of coal on the dock?
Ans. 36 tons.
Q. 72. And furnished from the four cargoes?
Ans. 148 tons.
Q. 73. The Quickstep?
Ans. 45 tons.
Q. 74. And deducted on account of the 1,068 on the dock?
Ans. 26.
Q. 75. Leaving——
Ans. 19 tons.
Q. 76. Ranger?
Ans. 312 tons.
Q. 77. Deducted on account of the coal on the dock?
Ans. 59 tons.
Q. 78. How much was left on the Ranger?
Ans. 253 tons.
Q. 79. Now, on the Strong?
Ans. 202 tons.
Q. 80. What was deducted on account of the coal on the dock?
Ans. 45 tons.
Q. 81. And that furnished to the Strong—from four cargoes?
Ans. 157 tons.
Q. 82. Now, are these figures you have given taken from the books, computed right from your books?
Ans. They are.
Q. 83. Are these figures that you have given now, as to the consumption of coal, from these four cargoes, the same figures that were given at the time of the trial?
Ans. They are.
Q. 84. In other words, I now understand that from the first coal that was consumed during the month of June by these steam-
166 ers from that pile of coal which consisted of 1,068 tons that was on the dock and other coal from some of these four cargoes, you first deducted, before giving any credit to the steamers from these cargoes of coal in question, 1,068 proportionately?
Ans. I did.

By the Court: Proportionate to what?
Ans. Proportionate to the total amount of coal used in June.
By the Court: Just tell me how you figured it—you took what the vessels discharged?
Ans. I took all the vessels discharged and added the amount of coal that they had for the month, the numer of tons—if I remember rightly it was 1,846 so, take the Adams, for example, which showed 51 tons—I would take 51/1,846 as the total amount of coal.

(By the Court:)

Q. 85. I do not follow you: You first calculated how much coal all of the vessels had received?

Ans. During the month of June and after——

Q. 86. Had they taken enough to exhaust the pile?

Ans. Yes—No, not to exhaust the pile.

Q. 87. Now you made a proportionate calculation: What was the other part of the proportion?

Ans. The other portion was the 1,068 tons, and the balance would bring what was on the dock with the other cargoes. On the Adams, take 51 tons—they took 51/1,846.

Q. 88. Where did you get the 1,846?

Ans. That was the total amount of coal taken from all the Steamers. On the Adams, take 51 tons—you take 51/1,846/1,086—that will give you the amount charged out of the 1,086 to the Adams.

167 Q. 89. When did you first make that computation?

Ans. I first made that compution for Mr. Cox.

Q. 90. Have you got the figures showing that calculation?

Ans. I have not; I worked it out.

Q. 91. Did you put anything on the books at the same time you made them?

Ans. I did not.

Q. 92. How does it appear on the books now? How can anybody else make it out from the books?

Ans. Well, anybody you had to keep the books would have to work it out on a proportionate basis. If they want to find out, the books will show the quantity of coal that was landed. They would have to work it out on a proportionate basis.

Q. 93. This was all deducted——

Ans. They took the coal—this cargo is 1,068 tons so——

By the Court: Let me see the decree there.

Mr. Healy: The opinion takes it out again. It is clear we all labored under the belief that it had not been deducted.

By the Court: I was informed by counsel it was the case; it represents the facts as agreed upon by counsel. There was no suggestion by any one that the facts are not correct.

Mr. Healy: There is no question but what we all believe it was correct up to less than two months ago—that the vessels from the cargoes delivered to Promised Land received 3,568 tons.

By the Court: You say that is incorrect?

Mr. Healy: Yes, certainly it is. It is not incorrect in this aspect, your Honor, it is not incorrect if you say that this was from

168 the first cargoes—it is exactly right; but if you say it was all that these vessels received from the four cargoes and the 1,068 tons of coal already there it is 1,068 tons out of the way because that amount is already taken out. That is just the mistake that we all labored under.

By the Court: I did not labor under any mistake. I took the figures you gave me as the only basis, and only passed on what was in the testimony.

Mr. Healy: I believe that, when the testimony went in here, that it was the total consumption of coal.

By the Court: 3,568 tons was taken by——

Mr. Healy: But 1,068 tons had been paid for.

By the Court: "The entire amount of coal was 4,459 tons of lien coal so called and 1,068 tons of non-lien coal, a total of 5,527." You make a larger total then, do you?

Mr. Healy: Why, it is 1,068 tons more because 3,568 tons is coal that was exactly used out of the four cargoes, and your Honor is taking from us 20 per cent of that when it has already been taken out. Now I didn't know it, Mr. Thornley didn't, Mr. Haslam didn't know it—none of us knew it.

By the Court: Now you come in here with the idea that he made a proportionate reduction on this entire amount. I want to know what evidence there is on the books that he did it.

Mr. Healy: It wasn't a matter that would go on the books at all. It was a computation that should have been made from the books, and was made and got from him by the receivers, from the books, but the total consumption of coal is on his books, and how he
169 arrived at the figures—what he testified to in court was a computation that was made several years ago, and a letter to the receivers is here that shows he was honest about it.

By the Court: There is another feature: All the 1,068 tons of coal—you have deducted that from the amount which went to the vessels——

Mr. Healy: The fact in relation to that—that it was soft coal, or anything that would mix, could not be taken out—1,068 tons of coal, in specie, could not be taken out, but it was identically the same coal, and it was held by your Honor, in his opinion, that we could not tell which of that 1,068 tons went to one or to another, so that we should take out 20 per cent on the assumption that that bore that relation to the total amount of coal furnished by us. Now Mr. Horton took exactly the same assumption.

By the Court: Now, did he?

Mr. Healy: Yes.

By the Court: You make the deduction now of 1,068 tons of coal that went to vessels, you diminish the amount of total consumption by the vessels by 1,068 tons?

Mr. Healy: Yes, your Honor.

By the Court: Now here is 1,068 tons much of which should have gone to the factory.

Mr. Healy: No; he can account for the factory.

The Witness: Now, Judge, I would like to set myself square with you on that: When I was in court before I wasn't asked the question how the distribution of the total amount of coal was made—but the distribution of those four cargoes, which I gave. I wasn't allowed to testify to anything else. It was objected to, I believe ruled
170 out. Now the 1,068 tons of coal from previous cargoes—at the time we had 1,068 tons at that time. The fact we had 979 tons in the factory bin the previous cargo, previous to 1,068 tons from the factory bin—used 1,068.

(By the Court:)

Q. 94. You had another bin for that?

Ans. Three bins—two for the steamers, one for the factory. The steamers never took coal from the factory bin.

By the Court: Any other questions, Mr. Healy?

(By Mr. Healy:)

Q. 95. Mr. Horton, after the amount that is charged on your books to these various steamers, did they use the entire amount of coal from the four cargoes and the 1,068 tons, or did the factory get some of that four cargoes and these 1,068 tons too?

Ans. The factory didn't get any of the 1,068 tons. The factory got some of the four cargoes.

Q. 96. How much?

Ans. 891 tons.

Q. 97. Now, that is, after taking out for the steamers and for the concern the 1,068 tons which they had in the bins from the coal that was consumed by the Steamers, and then giving the figures that you have for the consumption by the Steamers, as testified to there was, how many tons left?

Ans. 891.

Q. 98. Where did that go?

Ans. Went to the factory.

Q. 99. Was there anywhere else for it to go?

Ans. No, sir.

Mr. Healy: The fact that that 1,068 tons had been deducted from the consumption of these Steamers,—I want to state to the
171 Court, about these figures that were testified to in court, that it is absolutely brand new to me and I know it is to the other side—I am just as satisfied of it as I am of anything—that we labored under a mistake that that was the entire consumption of the Steamers from this pile. We want a lien for the coal that it is testified to has been used from these four cargoes, by this man.

By the Court: Are these books in use?

Ans. I believe they are all in use. They have been sold.

(By the Court:)

Q. 100. Who owns them?

Ans. I don't know who owns them.

Q. 101. How did you get at them? Were they obtained under a subpœna duces tecum?

Ans. Oh the books—I thought you said boats—we have the books. I have them under subpœna.

Q. 102. They are not in use?

Ans. Not in use because the factory is not running at the present time. They have been in use right along.

By the Court: Any reason why they should not be left here so that counsel may examine them?

Mr. Healy: No, I had to go into the other camp to get my witness. He works for their client.

By the Court: Have you finished with him?

Mr. Healy: I have, your Honor.

Cross-examination by Mr. Haslam:

C. Q. 103. I understand you to say, Mr. Horton that on your books, the two books which you have on your lap, there is nothing to show this computation of which you have testified?

Ans. No, not the working out of the proportions.

172 C. Q. 104. How long after you made the entries in these books did you work out this proportionate deduction?

Ans. The entries was made June, July, August and September, 1914, and the proportion and the deduction was made on February 1, 1915, at a request from Mr. Cox, the Receiver.

C. Q. 105. Now, I understand you to say the books show the gross amount of coal used during June, July and August, out of the four cargoes plus the 1,068 tons?

Ans. Yes.

C. Q. 106. The 1,068 tons was a previous cargo, wasn't it?

Ans. Yes, sir.

C. Q. 107. Now, any way the 1,068 tons was in two bins at the time?

Ans. The 1,068 tons was in one bin.

C. Q. 108. And when the first of these four cargoes arrived where was the coal placed with reference to the 1,068 tons?

Ans. Well, I couldn't tell you; I couldn't swear exactly to that. I should say when the first cargo arrived that it was placed in the empty bin.

C. Q. 109. The next cargo: Where was that placed?

Ans. On the top of the 1,068 tons.

C. Q. 110. Now during—when did these four cargoes arrive, do you remember?

Ans. Arrived the last part of May and the first part of June; the last one, about the middle of July.

C. Q. 111. Two arrived in May and one in July and one in June?

Ans. I can tell you exactly, Mr. Haslam, if you look for——

C. Q. 112. Can't you tell that from the receipt book?

Ans. From the date of the voucher—the voucher would be the record: 911 tons arrived on May 29.

Mr. Healy: Tell right there when it was discharged.

173 Ans. Finished discharging on June 8th.

922 on the barge Crystal, finished discharging that on June 2d.

1,187 from the barge Rhode Island—I have not got the discharge figures on that, but it arrived on the 11th of June.

I have not got the discharge figures—1,429, but that arrived on July 11th.

(By Mr. Haslam:)

C. Q. 113. Do your books show whether or not the 1,068 tons were used during June or July?

Ans. Not in regard to any use. You can identify where that 1,068 tons went. I am going on the supposition that the 1,068 tons that was charged out was the 1,068 tons.

C. Q. 114. That is, you are not testifying that it is the fact, that the 1,068 tons was atcually used in the month of June?

Ans. Not of that particular coal; there may have—some of the 1,068 may have been used in September. You could not identify by the month altogether.

C. Q. 115. Is it not possible that some of the 1,068 tons lasted into September when coal from other barges was bought and delivered there?

Ans. No; it was all used up before any other coal was bought from other parties.

C. Q. 116. All the coal in that bin used up?

Ans. It was.

C. Q. 117. Now, you made a computation, Mr. Horton, with reference to the Adams: I understood you to say that was—the proportion was 51/1,846 of 1,068: Did you compute that as to what that amounted to?

Ans. I made an exact computation, roughly, in your office this morning. That is the way I remember it. That was the proportionate part, as I remember it, in your office this morning.

174 C. Q. 118. You haven't got the computation there, have you, Mr. Horton?

Ans. No; it is on a paper on your desk.

C. Q. 119. How did you get the 51 tons?

Ans. The 51 tons was the total coal they had in the month of June.

C. Q. 120. And then there was 1,846, the total used by all the vessels during the month of June?

Ans. I believe that was the total.

C. Q. 121. When you say "all the vessels" you include other vessels and the vessels—those that are libelled in this case?

Ans. If I understand, the Portland was not libelled, or the East Hampton, or the Strong.

C. Q. 122. Assuming that the East Hampton, the Portland and the Strong were not libelled, and were not involved in this case, I will ask you if those three vessels used any coal during June?

Ans. Oh, yes, they are included in the total.

C. Q. 123. And in the month of June, how much did the East Hampton use?

Ans. 288 76/100 tons.

C. Q. 124. How much did the Strong use?

Ans. 79 36/100 tons.

C. Q. 125. And the Portland?

Ans. 63 81/100 tons.

C. Q. 126. You said June, did you not?

Ans. June, yes.

C. Q. 127. These computations that you made, Mr. Horton, were they rough computations, or were they exact?

Ans. They were exact——

C. Q. 128. As I figured out on the basis of the figures given to me by you, of the Adams, I find that deduction should have been 29½, whereas you have 28.

175 Ans. Now, I said exact—I threw the decimal or fraction point off.

C. Q. 129. Then, of the Adams, there may have been a difference of 1½ tons?

Ans. A difference of 1½ tons, something like that.

C. Q. 130. With reference to the other vessels did you estimate it in the same way?

Ans. Yes.

C. Q. 131. Since you estimated those roughly, Mr. Horton, how is it that they all total up 1,068 tons?

Ans. Well, it would not make any difference what proportion—any proportion would do, any kind of proportion would do.

C. Q. 132. That is, assuming that all the vessels are libelled: If three vessels out of the fifteen were not involved in this case it would make some difference, would it not?

Ans. It would. I know nothing about what vessels was libelled. Mr. Cox asked me to make out a list of how this coal was used. I made it out as near as possible.

Mr. Healy: The coal that went to the East Hampton, we haven't reached; the coal that went to the Portland, we haven't reached; the coal that went to Strong we haven't reached—but they used it. What difference does it make in this case, as long as you get 1,068 tons out it makes absolutely no difference whether it is put to one and thrown off another.

Mr. Haslam: It makes some difference how that 1,068 tons was disposed of.

Mr. Healy: You add up those deductions, you will find where it went.

By the Court: In this figure it is all taken out of those vessels.

176 Mr. Haslam: There was no distinction made between the vessels libelled and the vessels that were not libelled.

C. Q. 133. When, Mr. Horton, did you make the computation showing the distribution of the cargo of 1,068 tons?

Ans. I made it some time in February 1915.

C. Q. 134. You didn't report, did you, to the Receiver?

Ans. I did.

C. Q. 135. Is it not a fact you just reported to him the disposition of these four cargoes?

Ans. No, it is not.

C. Q. 137. Have you a copy of any letter which you sent to him showing the disposition of the 1,068 tons?

Ans. I have not got the correspondence with me here. I had this list of 1,068 tons in Providence three years ago.

By the Court: Were your computations on that?
Ans. Yes, sir.

(By Mr. Haslam:)

C. Q. 138. You say the computations were on those papers. You don't mean there is any figures showing how you arrived at this proportionate amount, do you?
Ans. No; I have not got how I figured out the proportionate amount, no.
C. Q. 139. All you have got is a list of the total amount of coal given to these vessels and the proportionate amount of the 1,068 tons?
Ans. Yes, sir.
C. Q. 140. That is all you have?
Ans. Yes, sir; I have a list of the 1,068 tons, and a list of the four cargoes.

177 By the Court: You mean, you have got a list of the proportionate amounts of the 1,068 tons?
Ans. A list of the different amounts to make up the 1,068 tons.

By the Court: Let us see what it is.
(Witness shows paper to the Court.)
By the Court: Any further questions, Mr. Haslam?

(By Mr. Haslam:)

C. Q. 141. As I understand, Mr. Horton, you don't claim that these proportionate amounts of the 1,068 tons, which were given us, are absolutely correct?
Ans. Not even to a ton or the fraction of a ton; no.

By the Court: Are they correct except as to such variations you have mentioned?
Ans. They are.

Mr. Haslam: That is all; no further questions.

By the Court: This is a motion to reopen the case. I think Mr. Horton is honest, and apparently he has no reason to testify otherwise than as to the facts. I think the evidence shows he did make a deduction of these 1,068 tons of coal therefore it appears that it was deducted before the testimony went into the main case, therefore the decree, as entered, would be erroneous in that it made the deduction of 20 per cent. This was so important an error that I think the case should be reopened, and the motion to reopen is granted.
It simply results in taking this testimony again. Do you care, Mr. Haslam, to have this testimony taken again?

178 Mr. Haslam: No, I don't.
By the Court: You make no objection to having this testimony go into the record as an enlargement of the record and your objection is not on that.

Mr. Haslam: If the case is to be reopened, it is agreeable to me that this record, this testimony should go in as part of the record, subject to my exception to your Honor's reopening the case and modifying the decree already entered.

Mr. Healy: Will your Honor give an order for that direct or will the statement, as it stands on the record——

By the Court: I will direct that an order be entered, that this evidence being in the case, the record will be enlarged by the addition of this testimony, and the decree will be amended by omitting the deduction of 20 per cent.

The decree will be a re-draft decree in making the correction. I do not know that it is necessary to re-draft the whole thing. The decree was originally entered. That decree, of course, will stand. I will reopen the case and order that the decree may be reformed by striking out the deduction of 20 per cent.

Mr. Haslam: Will you have my exception noted on the record to your Honor's entering of this order of the reopening of the case.

By the Court: You may have that exception, Mr. Haslam.

179 *Interlocutory Order to Reopen Case for Production of Further Testimony.*

(Filed in Consolidated Cause #1359, November 1, 1917.)

The petition of the Libellant in the above entitled cause, filed on the 29th day of September, A. D., 1917, to re-open said cause for the production of further testimony, for the reasons and causes in said petition mentioned and set forth, coming on for hearing; now after consideration of the testimony of Charles R. Horton in relation to the matters mentioned in said petition and the arguments of counsel, and it appearing that the facts in relation to such matter have only just been discovered and have been promptly and seasonably brought to the attention of the Court, it is now

Ordered, that the motion of said Libellant that said cause be reopened for the production of further testimony be, and the same is hereby granted.

Entered as the order of Court this 1st day of November, A. D. 1917.

THOMAS HOPE,
Clerk.

Enter as of October 19, 1917.
ARTHUR L. BROWN, *J.*

The exception of the Claimant to the above order is hereby noted.
ARTHUR L. BROWN, *J.*

180 *Interlocutory Order to Amend Final Decree.*

(Filed in Consolidated Cause #1359, November 1, 1917.)

Pursuant to the order of the 19th day of October, A. D. 1917, re-opening said cause, this cause came on for a further hearing.

Counsel for the Claimant reserving his exception to the order re-opening said cause, but consenting that the testimony of Charles R. Horton, taken before this Court this day on the Petition to re-open, should be used as the testimony upon this hearing, pursuant to the order permitting the re-opening of said cause, it is, therefore.

Ordered, that the testimony of Charles R. Horton be added to the evidence in the case.

The case was then further heard upon said testimony.

And thereupon the Court was of the opinion that in the testimony of Charles R. Horton given at the first hearing of said cause on June 14, 1915, and the stipulation filed August 20, 1915, on behalf of the Libellant, there was manifest error, in that a deduction of 1,068 tons of coal, being the amount of lien coal, so called, on hand, had already been made from the amount of coal actually consumed by said vessels, and that by the deduction of the amount of 20% from the amounts of coal found by the decree to have been used by them, there would result an error of double deduction of the amount of 1,068 tons of non-lien coal, so called, it is, therefore,

Ordered, Adjudged and Decreed that the decree entered herein on the 10th day of July, A. D. 1917, be amended by eliminating therefrom all reference to the 20% deduction ordered by the Court in its opinion filed on the 29th day of January, A. D. 1917, from

181 the amount shown to have been consumed from Promised Land by said steamers, respectively, and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause, without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

Draft decree amended in accordance with this order, with interest computed to November 1, 1917, may be presented accordingly.

Entered as the Order of Court this 1st day of November, A. D. 1917.

THOMAS HOPE,
Clerk.

Enter as of October 19, 1917.
ARTHUR L. BROWN, *J.*

The exception of the Claimant to the above order amending said decree is hereby noted.

ARTHUR L. BROWN, *J.*

Claimant's Waiver of Objections to Form of Decree.

(Filed in Consolidated Cause #1359, November 1, 1917.)

The claimant does not object to the entry of the amended decrees of the Piedmont & Georges Creek Coal Company, against the respective steamers filed to-day, but does not however consent to the entry of such decrees as establishing liability as to said maritime liens.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

182 *Amended Final Decree.*

(Filed in Consolidated Cause #1359, November 1, 1917.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, Adjudged and Decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett, No. 1329 and Rollin E. Mason, No. 1333, having been consolidated, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this case and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet——

4 cargoes coal at Promised Land	4,459 tons value of.....	$14,625.52
1 cargo coal at Tiverton, R. I.	861 tons value of.....	$3,228.75
	Total 5,320 tons value of.....	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

183 To all steamers mentioned
in consolidated libels——

	Tons.	Tons.		Value.	Total Value.
From Promised Land	2,778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	2,349.37	$11,461.21
To the following vessels not yet libelled——					
From Promised Land					
Str. Portland	148				
" Strong	157				
" Sanford	3				
" East Hampton	482	790	@ $3.28	$2,591.20	
From Tiverton					
Str. East Hampton	125.25				
Str. Strong	18.25				
" Sanford	13.				
" Adroit	7.	163.5	@ $3.75	$613.13	$3,204.33
That there was used by the factory at Promised Land	891		@ $3.28	$2,922.48	
By the Factory at Tiverton	71		@ $3.75	266.25	$3,188.73
	4,459	861			$17,854.27

It further appearing that there was on hand at Promised Land, at the time the four cargoes of coal in dispute were delivered there amounting to ..... 4,459 tons

Other coal belonging to the Atlantic Phosphate & Oil Corporation, which had been paid for, amounting to ..... 1,068 tons

A Total of ..... 5,527 tons

184 That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence, that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as hereinbefore set forth, there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1,068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, Ordered, Adjudged and Decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger used as hereinbefore and hereinafter shown and set forth.

It also appearing, that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate

& Oil Corporation at Promised Land and at Tiverton, in its business out of that furnished by the Libellant, coal to the value of $3,188.73, payment for which was due and unpaid on August 24, 1914;

It is, therefore, Ordered, Adjudged and Decreed, that such amount being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2,000 should be applied in reduction of the open account due and
185 unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Walter Adams from the cargoes of coal in dispute in this action——

99 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$324.72
And also 22.25 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to	83.44
Or the sum of	$408.16
And that the said Libellant is justly entitled to have and recover from the fishing steamer said sum of $408.16, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	79.59
Or a total amount of	$487.75

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Company, did provide and furnish to the fishing steamer Alaska from the cargoes of coal in dispute in this action——

304 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$997.12
And also 113.25 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to	424.69
Or the sum of	$1,421.81
186 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1,421.81, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	$277.25
Or a total amount of	$1,699.06

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Arizona from the cargoes of coal in dispute in this action——

35 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$114.80
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $114.-80, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	$22.39
Or a total amount of.....	$137.19

It is further Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer George Curtiss from the cargoes of coal in dispute in this action——

193 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton amounting to.....	$633.04
And also 36.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to.....	$136.88
Or the sum of	$769.92
187 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $769.92, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	$150.13
Or a total amount of	$920.05

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Montauk from the cargoes of coal in dispute in this action——

121 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$396.88
And also 56.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to.....	211.88
Or the sum of	$608.76
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $608.-76, together with interest thereon from August 1,	

1914, to November 1, 1917 amounting to the further sum of $118.71

Or the total sum of..... $727.47

It is Ordered, Adjudged and Decreed by the Court that the Libellant the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Quickstep from the cargoes of coal in dispute in this action——

19 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to..... $62.32

188 And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $62.32, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of 12.15

Or a total amount of $74.47

It is Ordered, Adjudged and Decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Ranger from the cargoes of coal in dispute in this action——

253 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to..... $829.84

And also 84.5 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to..... $316.88

Or the sum of..... 1,146.72

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1,146.72, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of 223.61

Or a total amount of..... $1,370.33

The total amount due from all of said steamers amounting to $5,416.32
Together with costs as taxed, amounting to the sum of 194.30

Total $5,610.62

And it further appearing that said fishing steamers Wa[illegible] Adams, Alaska, Arizona, George Curtiss, Montauk, Qui[illegible]ep and
189 Ranger, were released in this cause upon the filing of a bond in the sum of $19,000.00 by the Claimant, the Seaboard

Fisheries Company, and its surety, the Equitable Surety Company, as obligors; it is further

Ordered, Adjudged and Decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fifty-six Hundred and Ten and 62/100 Dollars ($5,610.62), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further Ordered, Adjudged and Decreed that unless an appeal be taken from this decree on or before November 3, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Enter November 1, 1917.

ARTHUR L. BROWN.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE,

Clerk.

190 *Claimant's Petition for Appeal.*

(Filed in Consolidated Cause #1359, November 9, 1917.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about June 16, 1915, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamers to recover "certain unspecified sums of money due for coal used by each of the several vessels libelled," with interest and costs, as by reference to said libel will more fully appear.

2. On or about the 9th day of July, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the total sum of Forty-five Hundred Thirty-six and 39/100 Dollars ($4,536.39) against all of said vessels libelled and the sum of One Hundred Thirty-one and 35/100 Dollars (131.35) as costs.

4. On October 19, 1917 the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony
191 therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the total sum of Fifty-four Hundred and Sixteen and 32/100 Dollars ($5,416.32) as a maritime lien against all of the said fishing steamers libelled and the sum of One Hundred Ninety-four and 30/100 Dollars ($194.30) as costs.

5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Fifty-four Hundred and Sixteen and 32/100 Dollars ($5,416.32) and the said sum of One Hundred Ninety-four and 30/100 Dollars ($194.30) as costs.

6. For this and other reasons the above named claimant and appellant appeal from said amended final decree to the United States Circuit Court of Appeals for the First Circuit and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reserved and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal allowed, November 9, 1917.
ARTHUR L. BROWN, *J.*

192 *Assignment of Errors by Claimant.*

(Filed in Consolidated Cause #1359, November 9, 1917.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessels libelled, as appears on pages 73-75 of this record.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessels libelled, as appears on pages 80-82 of this record.

3. In that said Court at the trial of said cause admitted certain testimony of Charles E. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging
193 to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessels libelled, as appears on pages 84-85 of this record.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessels upon the credit of said vessels and not upon the credit of the owners thereof.

5. In that the Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats., 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessels libelled for such coal as was actually used by said vessels.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessels although said coal had been delivered to the owner of the said vessels for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that libellant was entitled to a maritime lien for coal used by said vessels under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats., 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels
194 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of $2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said court held that no credit should be given or allowed for the payment of said sum of $2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessels libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case

allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January, A. D. 1917, from the amounts shown to have been consumed from Promised Land by said Steamers and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any
195 deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessels in the sum of $5,416.32, together with costs taxed at $194.30, or a total sum of $5,610.62.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

196 *Appeal Bond.*

(Filed in Consolidated Cause No. 1359, November 9, 1917.)

United States Circuit Court of Appeals for the First Circuit.

Bond to Party on Appeal.

Know all Men by These Presents, That we, Seaboard Fisheries Company, Inc., a corporation organized under the laws of the State of New York, with its principal place of business at 60 Broadway, City, County and State of New York, principal, and American Surety Company of New York, a corporation organized under the laws of the State of New York, with its principal place of business at 100 Broadway, City, County and State of New York, as sureties, are held and firmly bound unto Piedmont & Georges Creek Coal Company a corporation, and libellant in that case in admiralty hereinafter described, in the full and just sum of Two Hundred and Fifty Dollars ($250) to be paid to the said Piedmont & Georges Creek Coal Company, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 8th day of November in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a session of the District Court of the United States for the District of Rhode Island, in a suit in admiralty de-

pending in said Court between Piedmont & Georges Creek Coal Company against Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, their en-
197 gines, boats, etc., numbered in admiralty 1359, a decree was entered against the said Seaboard Fisheries Company, Inc., on the 1st day of November, A. D. 1917, and the said Seaboard Fisheries Company, Inc., having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Piedmont & Georges Creek Coal Company citing and admonishing it to be and appear in the said United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, on the 8th day of December, A. D. 1917.

Now, the condition of the above obligation is such, That if the said Seaboard Fisheries Company, Inc., shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of

SEABOARD FISHERIES CO., INC.,
By its Attorneys, GARDNER, PIRCE & THORNLEY.
AMERICAN SURETY CO. OF NEW YORK,
By S. E. DAVIS,
Resident Vice-Pres't.
H. W. PIKE,
Resident Ass't Sec'y.

Approved:
ARTHUR L. BROWN, *J.*

198 *Citation on Appeal.*

(Filed in Consolidated Cause #1359.)

United States Circuit Court of Appeals for the First Circuit.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, on the 8th day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Seaboard Fisheries Company, Inc., is appellant and you are appellee,

to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this 9th day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

199 *Stipulation as to Filing of Certain Papers.*

(Filed in Consolidated Cause No. 1359.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such time as was extended by stipulation and order of said Court.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
FRANK HEALY,
Proctor for Libellant.

Stipulation as to the Record on Appeal.

(Filed in Consolidated Cause #1359.)

It is hereby agreed that the foregoing testimony, pleadings, opinions and other documents shall constitute the record on appeal in the above entitled case, and need not be certified by the Clerk of the District Court except as an agreed record.

FRANK HEALY,
Proctor for Libellant.
GARDNER PIRCE & THORNLEY,
Proctors for Claimant.

200*a* *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss.:*

The President of the United States To the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, wherein Seaboard Fisheries Company, Inc., is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

NOVEMBER 17, 1917.

I, the undersigned, as proctor for the within-named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

(Filed in Circuit Court of Appeals December 15, 1917.)

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Cir-
200*b* cuit Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE,
Clerk.

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1328.

FISHING STEAMER HERBERT N. EDWARDS, SEABOARD FISHERIES Company, Inc., appellant, v. Piedmont & Georges Creek Coal Company, Appellee.

201 United States District Court, District of Rhode Island.

Admiralty No. 1334. Petition of Piedmont & Georges Creek Coal Company to Intervene.

BENJAMIN MARCHANT, et al., Libellant,

against

FISHING STEAMER HERBERT N. EDWARDS.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1334.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libelant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Herbert N. Edwards is now within this District and is being held subject to the process of this court in the libel hereto instituted herein by Benjamin Marchant
202 et al. against the fishing steamer Herbert N. Edwards, No. 1334 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914 the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was un-

willing to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith and credit of the maritime liens on the said vessels thus agreed
203 expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 tons at $3,30 delivered.....		$3,006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 tons at $3.65 delivered		3,365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914. To 1,187 tons at $3,10.....	$3,679.70	
To Dock & Trimimng charges.....	44.61	
		3,724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 tons at $3,75 delivered		3,228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		

204	To 1,439 tons at $3.10.....	$4,460.90	
	To Towing & Trimming charge.....	65.17	4,526.07
			$17,850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Herbert N. Edwards, and allocated by the said Atlantic Phosphate & Oil Cirporation as a lien against her, was $3,006.30, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Herbert N. Edwards for the value of the said coal so sold, delivered and furnished on May 19th, 1914, in the sum of $3,006.30, with interest thereon from May 19th, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Herbert N. Edwards, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Herbert N. Edwards and the other steamers above mentioned, was intended for their use and actually used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil
205 Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 1 hereof and therein set opposite to the names of the said vessels, and it now has and since May 19th, 1914, has had, a good and valid maritime lien against the steamer Herbert N. Edwards in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on May 19th, 1914, as above set forth, in the sum of $3,006.30, with interest thereon from May 19, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about May 19th, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of

the steamer Herbert N. Edwards, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Herbert N. Edwards, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Herbert N. Edwards 911 tons of coal of the reasonable and agreed value of $3,006.30. Wherefore, the petitioner has a maritime lien on the Steamer Herbert N. Edwards, for the said agreed value of the said coal in the sum of $3,006.30, with interest thereon from May 19, 1914.

206

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Herbert N. Edwards and the Atlantic Phosphate & Oil Corporation for use on the steamer Herbert N. Edwards, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Herbert N. Edwards and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Herbert N. Edwards for the value of the coal so sold and furnished to her in the sum of $3,006.30, with interest thereon from May 19, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Herbert N. Edwards, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Herbert N. Edwards, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libellant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Herbert N. Edwards and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since May 19, 1914, has had a good and valid maritime lien against the said steamer Herbert N. Edwards for the reasonable and agreed value of the coal so furnished in the sum of $3,006.30, with interest thereon from May 19, 1914.

207

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libellant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Herbert N. Edwards, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claim to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Herbert N. Edwards and in favor of your petitioner for the amount of its said maritime lien, to wit, $3,006.30 with interest thereon from May 19, 1914, together with the cost and disbursements of the petitioner in this action, and

that the fishing steamer Herbert N. Edwards be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Petitioner.

208 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.
CLETUS KEATING,
Notary Public, 2068. New York County.

[SEAL.]

209 *Libellant's Stipulation for Costs.*

District Court of the United States, District of Rhode Island.

(Filed Dec. 4, 1914, in Admr. #1334.)

Whereas a libel was filed in this court on the ——day of December, A. D. 1914 by Piedmont & Georges Creek Coal Company against the fishing steamer "Herbert N. Edwards" for the reasons and causes in the said libel mentioned and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and the Fidelity & Deposit Company of Maryland, its surety, hereby consenting and agreeing that in the case of default or contumacy on the part of the libellant or surety, execution may issue against their goods, chattels and lands for the sum of two Hundred and Fifty Dollars ($250.)

Now, Therefore, it is stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and are bound in the sum of Two Hundred and Fifty Dollars ($250) and

that the libellant above named shall pay all such costs as shall be awarded against it by this court or in case of appeal by the Appellate Court.

(Signed) PIEDMONT & GEORGES CREEK COAL CO.,
By FRANK HEALY, *Att'y,*
FIDELITY & DEPOSIT CO. OF MARYLAND,
By WM. B. GREENOUGH,
Attorney in Fact.

Attest:

G. L. & H. J. GROSS,
Agents,
By JAMES F. PHETTEPLACE.

210 *Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.*

(Filed Dec. 7, 1914, in Admr. #1334.)

And now appears I. R. Oeland and Alfred C. Coxe, Jr., receivers of Atlantic Phosphate & Oil Corporation, a corporation organized under the laws of the State of New York, said receivers having been appointed by this court in a proceedings entitled "Waldemar Schmidtman, claimant, vs. Atlantic Phosphate & Oil Corporation, defendant," Equity No. 44, and state that said Atlantic Phosphate & Oil Corporation was and is the owner of said fishing steamer Herbert N. Edwards and for and on behalf of said Atlantic Phosphate & Oil Corporation claim the said fishing steamer Herbert N. Edwards and pray to protect this fishing steamer accordingly.

GARDNER, PIRCE & THORNLEY.

DISTRICT OF RHODE ISLAND,
City and County of Providence:

William H. Thornley being duly sworn, says that Atlantic Phosphate & Oil Corporation is the true and bona fide owner, subject to certain mortgage liens against said fishing steamer Herbert N. Edwards by Benj. Marchant, et al., libellant; that said I. R. Oeland and Alfred C. Coxe, Jr., are the receivers of said Atlantic Phosphate & Oil Corporation; that no other person is the owner of said fishing steamer; that for the purpose of this suit deponent is the agent of the owner of said receivers and is duly authorized by said receivers to put in their claim.

WILLIAM H. THORNLEY.

Sworn to before me this 7th day of December, A. D. 1914
HENRY W. GARDNER,
Notary Public.

211 *Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.*

(Filed Dec. 5, 1914, in Admr. #1334.)

The President of the United States of America to the Marshall of the District of Rhode Island or his Deputy, Greeting:

Whereas an intervening libel has been filed on the 4th day of December, 1914, by Piedmont & Georges Creek Coal Company against the steamer "Herbert N. Edwards" her boilers, engines, boats, tackle, apparel, furniture and appurtenances for the reasons and causes in said intervening libel mentioned, these are therefore to command you to serve this monition upon I. R. Oeland and Alfred G. Coxe, Jr., as they are receivers of Atlantic Phosphate & Oil Corporation and claimants herein, of the pendency of said intervening libel on or before December 8, 1914.

And make true return of this monition into the office of the Clerk of this Court on the 14th day of December, 1914.

Witness the Honorable Arthur L. Brown, United States District Judge at Providence within and for the District of Rhode Island this 4th day of December, A. D. 1914.

WILLIAM P. CROSS,
Clerk.

Due and sufficient service of this monition is hereby acknowledged.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimants.

212 *Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.*

(Filed Mar. 9, 1915, in Admr. #1334.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Herbert H. Edwards," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21,

1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate & Oil Corporation, et al., Defendant, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers
213 have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters
214 alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or

about September, 1914, and after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

215 The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars ($2,020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3,032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3,800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars ($2,000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein,
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

216 STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

217 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1334.)

On motion of Libellant, Claimant objecting, it is hereby Ordered that the intervening libel of the Piedmont & Georges Creek Coal Company in the above entitled cause be, and the same is hereby consolidated with the Libel Admiralty No. 1359, entitled Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtis, Montauk, Quickstep and Ranger.

And it is further ordered that on the filing in this Court of a bond with good and sufficient surety, in the sum of Nineteen Thousand ($19,000.00) Dollars, conditioned to pay and answer to any judgment or decree against any or all of the vessels proceeded against in the causes so consolidated, together with such interest and costs as may be allowed to the Libellant; the stipulators on the Stipulation for Value heretofore filed in this cause, No. 1334, in so far as the intervening libel of the said Piedmont & Georges Creek Coal Company is concerned, shall be released and discharged from any liability under their said stipulation, and that any recovery in this cause shall be paid and satisfied out of the bond given in the consolidated cause as aforesaid.

By the Court (Brown, J.), June 22, 1915.

WILLIAM P. CROSS,
Clerk.

Entered this 22nd day of June, A. D. 1915.
ARTHUR L. BROWN, *J.*

218 *Warrant of Delivery.*

(Filed June 29, 1915, in Admr. #1334.)

The President of the United States of America to the Marshall of the United States for the *United States* or to his Deputy Greetings:

Whereas, by agreement of counsel it has been ordered by the District Court of the United States for the District of Rhode Island, that the steamer "Herbert N. Edwards," her engines, boilers, tackle, apparel and furniture now in your custody under process of said court be delivered up to I. R. Oeland and Alfred G. Coxe, Jr., re-

ceivers of the Atlantic Phosphate & Oil Corporation, claimants of the within named vessel.

You are therefore hereby commanded to deliver up to said Claimants the said vessel, her engines, boilers, tackle, apparel and furniture, taking receipt of said claimants for the same on this warrant of delivery.

And make the due return of this warrant in the Clerk's Office of said Court.

Witness the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island this 17th day of June, 1915.

WILLIAM P. CROSS,
Clerk.

Executed at Providence, in the District of Rhode Island, on this 17th day of June, A. D. 1915, by delivering the within named steamer to its owners and taking their receipts for the same.

JOHN J. RICHARDS,
U. S. Marshall.

219 *Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.*

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1334.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

220 *Stipulation as to Exhibits.*

(Filed in Admr. #1334.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibit 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court if Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal

herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1334.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been field in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

221 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Herbert N. Edwards and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Herbert N. Edwards, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

222 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1334.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1334.)

Now comes the claimants in the above entitled cause and file their objections to the draft decree filed by counsel for the libellant.

1. Because no credit has been given or allowed in the draft decree filed herein for the payment of $2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels in those causes which were consolidated with and tried at the same time as the above entitled libel, in accordance with the opinion of this court filed January 29, 1917.

2. Because said payment of $2,000 is applied "in reduction of the open account due and unpaid for coal furnished and used
223 by the Atlantic Phosphate & Oil Corporation, but which the libellant has been unable to trace to the vessels, and for which it has no security."

3. Because the statement made on page 2 of said decree and elsewhere that it is unable to trace 891.8 tons of coal delivered at Promised Land and that the same is "left unaccounted for," whereas the said coal can be traced and is accounted for as being used by the claimants' plant at said place as appears in the opinion of this court in said cause filed January 29, 1917.

4. Because in the statement of taxable costs in said decree there is included a proctor's fee of $20, although a similar fee is charged in each of the five other libels which were all consolidated with the said cause by order of said court, tried together by the same attorneys, and proved by the same witnesses.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimants.

224 *Opinion of Court.*

(Filed July 10, 1917, in Admr. #1334.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admir. #1334.)

This cause, together with Admiralty causes Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Annagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June 1917, the mat-
225 ter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of....	$14,625.52
1 cargo coal at Tiverton, R. I.,...	.861 tons value of....	3,228.75
Total	5320 tons value of....	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

	Tons.	Value.	
To all steamers mentioned in consolidated libels—			
From Promised Land 2778, less 20%	2222.4 @ 3.28	—$7289.48	
To all steamers mentioned in consolidated libels—			
From Tiverton	626.5 @ 3.75	—$2349.39	$9638.87
	2848.9 tons		
To the following vessels not yet libelled:			
From Promised Land—			
Str. Portland 148			
Str. Strong 157			
Str. Sanford 3			
Str. East Hampton .. 482			
790, less 20%	632. @ 3.28	—$2072.95	
From Tiverton—			
Str. East Hampton 125.25			
226			
Str. Strong 18.25			
Str. Sandford .... 13.			
Str. Adroit ..... 7.	163.5 @ 3.75	— $613.13	$2686.08
	795.5 tons		
That there was used by the factory at Promised Land 891, less 20%	712.8 @ 3.28	—$2337.97	
By the factory at Tiverton	71. @ 3.75	— $266.25	
This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it	891.8 @ 3.28	—$2925.10	$5529.32
Total cargoes	5320 tons	Value.....	$17854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to ..... 4459 tons
Other coal belonging to the Atlantic Phosphate & Oil corporation which had been paid for, amounting to... 1068 tons

Total ..... 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes,
is the proportion of coal that was at Promised Land and
227 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Herbert N. Edwards, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

339.2 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to..... $1112.58

228 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1112.58, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of.. 194.70

or a total amount of..... $1307.28
together with costs as taxed, amounting to the sum of.... 46.50

$1353.78

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligers; it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Thirteen Hundred Fifty-three and 78/100 Dollars ($1353.78), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.
THOMAS HOPE, *Clerk.*

Entered July 10, 1917.
ARTHUR L. BROWN, *J.*

229 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpœna Duces Tecum Filed by Libellant.

Subpœna Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1334.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal

Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

230 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1334.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett, No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459	tons value of..	$14,625.52
1 cargo coal at Tiverton, R. I.	861	tons value of..	3,228.75
Total	5320	tons value of..	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

231

To all steamers mentioned in consolidated libels:

	Tons.	Tons.		Value.	Total value.
From Promised Land	2778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	2,349.37	$11,461.21
To the following vessels not yet libelled:					
From Promised Land—					
Str. Portland	148				
Str. Strong	157				
Str. Sanford	3				
Str. East Hampton	482				
	790		@ $3.28	$2,591.20	
From Tiverton—					
Str. East Hampton	125.25				
Str. Strong	18.25				
Str. Sanford	13.				
Str. Adroit	7.				
		163.5	@ $3.75	$613.13	$3,204.33
That there was used by the Factory at Promised Land	891		@ $3.28	$2,922.48	
By the Factory at Tiverton		71	@ $3.75	266.25	$3,188.73
	4459	861			$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to ..... 4459 tons

232

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to.. 1068 tons

A total of ..... 5527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the vessel, Herbert N. Edwards, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of $3,188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2,000 made
233 on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2,000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Herbert N. Edwards from the cargoes of coal in dispute in this action—

424 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$1,390.72
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1,390.72, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	271.19
Amounting to	$1,661.91
Together with costs as taxed, amounting to the sum of	48.75
Or a total amount of	$1,710.66

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19,000.00 by the

Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is furthe

234 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Seventeen Hundred and Ten and 66/100 Dollars ($1,710.66) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 19[illegible], the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1334.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United

235 States for the District of Rhode Island against the above named fishing steamer to recover the sum of Three Thousand Six and 30/100 Dollars ($3,006.30) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Thirteen Hundred Seven and 28/100 Dollars ($1307.28) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars ($46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant reopened said case for the production of further testimony therein and

after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Sixteen Hundred and Sixty-one and 91/100 Dollars ($1,661.91) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

236 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty-one and 91/100 Dollars ($1661.91) and the said sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.
ARTHUR L. BROWN, *J.*

237 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1334.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admittted certain testimony of Charles B. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a

cargo of 911 tons of coal was used by several vessels belonging t
the said claimant, although said coal was delivered to said claima
at Promised Land and was not delivered or furnished to the sa
vessel libelled, as appears on pages 80-82 of the record in Consol
dated Cause #1359.

3. In that said Court at the trial of said cause admitted certain te
timony of Charles H. Milligan offered by the libellant, Piedmo
& Georges Creek Coal Co., and objected to by the said claimant, th
substance of which was that said witness was allowed to testify h
a certain cargo of coal was used by various vessels belongin
238 to the said claimant, although said coal was delivered to sa
claimant at Tiverton, Rhode Island, and was not delivered
furnished to the said vessel libelled, as appears on pages 84-85
the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritim
lien is claimed in said libel was "furnished" to the said vessel up
the credit of said vessel and not upon the credit of the owners there

5. In that said Court held that the coal for which the maritim
lien is claimed in said libel was "furnished" in accordance with th
provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 60

6. In that said Court held that the libellant was entitled to
maritime lien upon the vessel libelled for such coal as was actual
used by said vessel.

7. In that said Court held that the libellant was entitled to
maritime lien for coal used by the said vessel although said coal ha
been delivered to the owner of the said vessel for general purpos
and mixed with other coal already paid for and with coal used f
non-maritime purposes.

8. In that said Court held that the libellant was entitled to
maritime lien for coal used by said vessel under and by virtue of th
Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal i
question there was an oral agreement between the said parties th
the said libellant should have a maritime lien on the vesse
239 belonging to the Atlantic Phosphate & Oil Corporation fo
coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right t
apply the payment of $2,000. made by the Atlantic Phosphate &
Oil Corporation to the libellant on August 24, 1914, to its unsecure
open account for coal and in such a way as not to reduce the clai
made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or al
lowed for the payment of said sum of $2,000. made by the Atlanti
Phosphate & Oil Corporation to the libellant on August 24, 191
either by pro rata reduction or by the extinguishment of the clai
for a maritime lien on the vessel libelled in said cause or on othe
vessels libelled in those causes which were consolidated with an
tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said cas
ordered that said cause be reopened for the production of further
testimony.

13. In that said Court after the entry of a final decree in said ase allowed the testimony of Charles E. Horton to be given and rdered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said ase ordered that said final decree be amended by eliminating there- rom all reference to the 20% reduction ordered by said Court in is opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land
240 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evi- dence before the Court at the time of the hearing of said cause with- out any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on No- vember 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of $1661.91, together with costs taxed at $48.75, or a total sum of $1710.66.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final de- cree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

241 *Bond to Party on Appeal.*

(Filed in Admr. #1334.)

United States Circuit Court of Appeals for the First Circuit.

Know all men by these presents, That we, Seaboard Fisheries Com- pany, Inc., a corporation organized under the laws of the State of New York, with its principal place of business at 60 Broadway, City, County and State of New York, as principal, and American Surety Company of New York, a corporation organized under the laws of the State of New York, with its principal place of business at 100 Broadway, City, County and State of New York, as sureties, are held and firmly bound unto Piedmont & Georges Creek Coal Company, a corporation and intervening libellant in that suit in admiralty herein- after described, in the full and just sum of Two Hundred and Fifty Dollars ($250), to be paid to the said Piedmont & Georges Creek Coal Company, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and sever- ally, by these presents. Sealed with our seals and dated this 8th day of November, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a session of the District Court of the United

States for the District of Rhode Island in a suit in admiralty depending in said Court between Benjamin Marchant et als., libellants, against fishing steamer Herbert N. Edwards, numbered in admiralty 1334, a decree was entered against the said Seaboard Fisheries
242 Company, Inc., on the 1st day of November, A. D. 1917, and the said Seaboard Fisheries Company, Inc., having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Piedmont & Georges Creek Coal Company, citing and admonishing it to be and appear in the said United States Circuit Court of Appeals for the First Circuit in the city of Boston, Massachusetts, on the 8th of December, A. D. 1917.

Now, the condition of the above obligation is such. That if the said Seaboard Fisheries Company, Inc., shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of

SEABOARD FISHERIES CO., INC. [SEAL.]

By Its Attorneys,

GARDNER, PIRCE & THORNLEY.

AMERICAN SURETY CO. OF NEW YORK, [SEAL.]

By H. E. DAVIS, *Resident Vice-Pres.*

H. W. PIKE, *Resident Asst. Secy.*

Approved:

ARTHUR L. BROWN, *J.*

243 *Citation on Appeal.*

(Filed in Admr. #1334.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the ap-

pellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the paties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

244 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1334.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

245 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1334.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorpo-

rated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PRICE & THORNLEY,
Proctors for Claimant.

246*a* *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
246b Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.
THOMAS HOPE, *Clerk.*

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

246c United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1329.

Fishing Steamer ROLLIN E. MASON.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

247 United States District Court, District of Rhode Island.

Admiralty. No. 1333.

MICHAEL KENNEDY et al., Libellant-,

against

Fishing Steamer ROLLIN E. MASON.

Petition of Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1333.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libelant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Rollin E. Mason is now within this District and is being held subject to the process of this court

248 in the libel heretofore instituted herein by Michael Kennedy, et al. against the fishing steamer Rollin E. Mason, No. 1333 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith

249 and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at $3.30 delivered		$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at $3.65 delivered		3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.		
To 1187 Tons at $3.10.....	$3679.70	
To Dock & Trimming charges	44.61	
		3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at $3.75 delivered		3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
250		
To 1439 Tons at $3.10.....	$4460.90	
To Towing & Trimming charges...	65.17	
		4526.07
		$17850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Rollin E. Mason, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was $3365.30, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Rollin E. Mason for the value of the said coal so sold, delivered and furnished on May 23, 1914, in the sum of $3365.30, with interest thereon from May 23, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Rollin E. Mason, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Rollin E. Mason and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies

or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phos-
251 phate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 2 hereof and therein set opposite to the names of the said vessels, and it now has and since May 23, 1914, has had, a good and valid maritime lien against the steamer Rollin E. Mason in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on May 23, 1914, as above set forth, in the sum of $3365.30, with interest thereon from May 23, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about May 23, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Rollin E. Mason, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Rollin E. Mason and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Rollin E. Mason, 922 tons of coal of the reasonable and agreed value of $3365.30. Wherefore, the petitioner has a maritime lien on the steamer Rollin E. Mason for the said
252 agreed value of the said coal in the sum of $3365.30, with interest thereon from May 23, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Rollin E. Mason and the Atlantic Phosphate & Oil Corporation for use on the steamer Rollin E. Mason, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Rollin E. Mason and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Rollin E. Mason for the value of the coal so sold and furnished to her in the sum of $3365.30, with interest thereon from May 23, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Rollin E. Mason, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Rollin E. Mason, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June

23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Rollin E. Mason and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since May 23, 1914, has had a good and valid
253 maritime lien against the said steamer Rollin E. Mason for the reasonable and agreed value of the coal so furnished in the sum of $3365.30, with interest thereon from May 23, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libelant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Rollin E. Mason, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Rollin E. Mason and in favor of your petitioner for the amount of its said maritime lien, to wit, $3365.30, with interest thereon from May 23, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Rollin E. Mason be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,
Proctors for Petitioner.

254 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.
[SEAL.] CLETUS KEATING,
Notary Public, 2068, *New York County.*

255 *Libellant's Stipulation for Costs.*

(Filed Dec. 4, 1914, in Admr. #1333.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1333.)

Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1333.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1333.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Rollin E. Mason," her engines, etc., as the same are pro-
256 ceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation, et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly

qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter
257 called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

258 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the office of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty

and 02/100 Dollars ($2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3800), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars ($2,000) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but
259 that the amount thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein.
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

260 *Order to Consolidate with Libel Admiralty No. 1359 and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1333.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1333.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1333.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamer Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

261 *Stipulation as to Exhibits.*

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1333.)

The Libellant, Piedmont & Georges Creek Coal Company, pray leave to amend the libel heretofore filed in the above entitled cause in accordance with the testimony produced at the trial of said cause as follows:

In Article Third, page 2, after the words, "William B. Murray" insert, "and twelve other fishing steamers, against seven of which libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

262 *Motion to Amend Libel.*

That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Rollin E. Mason and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Rollin E. Mason, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH.
Notary Public.

263 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1333.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Co.

Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1333.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

264 *Opinion of Court.*

(Filed July 10, 1917, in Admr. #1333.)

(This opinion will also be found in the record on appeal of admiralty case number 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1333.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the
265 matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of	$14,625.2
1 cargo coal at Tiverton, R. I.....	861 tons value of	3,228.7
Total	5320 tons value of	$17,854.2

And it appearing from the testimony that the distribution of the coal was as follows:

	Tons.	Value.	
To all steamers mentioned in consolidated libels—			
From Promised Land 2778, less 20%	2222.4 @ 3.28	—$7289.48	
To all steamers mentioned in consolidated libels—			
From Tiverton	626.5 @ 3.75	—$2349.39	
	2848.9 tons		$9638.8
To the following vessels not yet libelled:			
From Promised Land—			
Str. Portland 148			
Str. Strong 157			
Str. Sanford 3			
Str. East Hampton .. 482			
790, less 20%	632. @ 3.28	—$2072.95	
From Tiverton—			
Str. East Hampton 125.25			
266			
Str. Strong 18.25			
Str. Sandford ... 13.			
Str. Adroit ..... 7.	163.5 @ 3.75	— $613.13	
	795.5 tons		$2686.9
That there was used by the factory at Promised Land 891, less 20%	712.8 @ 3.28	—$2337.97	
By the factory at Tiverton	71. @ 3.75	— $266.25	
This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it	891.8 @ 3.28	—$2925.10	$5529.3
Total cargoes	5320 tons	Value.....	$17854.2

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to ..... 4459 tons
Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to... 1068 tons

Total ..... 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and
267 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Rollin E. Mason, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

239.2 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$784.5
And also 153 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to	573.7
Or the total sum of	$1358.3
268 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1358.33, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	237.7
Or a total amount of	$1596.0
Together with costs as taxed, amounting to the sum of	46.3
	$1642.3

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligers: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Sixteen Hundred Forty-two and 33/100 Dollars ($1642.33), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter July 10, 1917.

ARTHUR L. BROWN, *J.*

269 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpœna Duces Tecum Filed by Libellant.

Subpœna Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1333.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

270 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1333.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons	value of....	$14,625.[illegible]
1 cargo coal at Tiverton, R. I.	861 tons	value of....	3,228.[illegible]
Total	5320 tons	value of....	$17,854.[illegible]

And it appearing from the testimony that the distribution of the coal was as follows:

271

To all steamers mentioned in consolidated libels:

	Tons.	Tons.	Value.		Total value
From Promised Land ..	2778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	2,349.37	$11,461.2[illegible]
To the following vessels not yet libelled:					
From Promised Land—					
Str. Portland	148				
Str. Strong	157				
Str. Sanford	3				
Str. East Hampton	482				
	790		@ $3.28	$2,591.20	
From Tiverton—					
Str. East Hampton ...	125.25				
Str. Strong	18.25				
Str. Sanford	13.				
Str. Adroit	7.				
		163.5	@ $3.75	$613.13	$3,204.3[illegible]
That there was used by the Factory at Promised Land	891		@ $3.28	$2,922.48	
By the Factory at Tiverton		71	@ $3.75	266.25	$3,188.7[illegible]
	4459	861			$17,854.2[illegible]

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to ..... 4459 ton[illegible]

272

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to.. 1068 to[illegible]

A total of ..... 5527 to[illegible]

That all the coal was mingled together, and that the entire amount coal was used by the Atlantic Phosphate & Oil Corporation for its et and in its factory.

It further appearing, however, from the evidence that before any al was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deucted proportionately from the total consumption of said vessels, spectively, at Promised Land, the amount of 1068 tons—that mount having been the quantity on hand when the first of the four rgoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant entitled to a maritime lien for the value of the coal that the Rollin . Mason, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the ibellant claims a lien against the respective vessels, libelled and not ibelled, there was used by the factories of the Atlantic Phosphate Oil Corporation at Promised Land and at Tiverton in its business ut of that furnished by the Libellant, coal to the total value of 3188.73, payment for which was due and unpaid on August 24, 914:

It is, therefore, ordered, adjudged and decreed that such amount, eing due and unpaid, the claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or 273 about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Rollin E. Mason from the cargoes of coal in dispute in this action:

299 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$980.72
And also 153 tons of coal at Tiverton, R. I. of the value of $3.75 per ton amounting to	573.75
Or the total sum of	$1,554.47
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1554.47, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of	303.12
Amounting to	$1,857.59
Together with costs as taxed, amounting to the sum of	48.75
Or a total amount of	$1,906.34

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

274 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Nineteen Hundred and six and 34/100 ($1,906.34) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter November 1, 1917.
ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1333.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States

275 for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty three Hundred Sixty five and 36/100 Dollars ($3,365.36) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fifteen Hundred ninety-six and 03/100 Dollars ($1596.03) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars ($46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown,

Judge of said District Court, upon the motion of said libellant reopened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant — of the said sum of Eighteen Hundred and Fifty-seven and 59/100 Dollars ($1857.59) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

276 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Eighteen Hundred and Fifty-seven and 59/100 Dollars ($1857.59) and the said sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.
ARTHUR L. BROWN, *J.*

277 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1333.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles B. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging
278 to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels
279 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of $2,000. made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of $2,000. made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said

case, ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land
280 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of $1857.59, together with costs taxed at $48.75, or a total sum of $1906.34.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1333.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

281 *Citation on Appeal.*

(Filed in Admr. #1333.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and in behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

282 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1333.)

It is stipulated by and between said parties that the papers and record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all only filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY, *Proctor for Libellant.*
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

283 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits; claimant's exhibits; the two written opinions filed by said Court; the evidence for libellant in support of its motion to reopen said for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Mont

Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY, *Proctor for Libellant.*
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

284 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1333.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
FRANK HEALY, *Proctor for Libellant.*

284*a* *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Michael Kennedy et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this

ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
284*b* Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

284*c* United States Circuit Court of Appeals for the First Circuit
October Term, 1917.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

285 United States District Court, District of Rhode Island.

Admiralty. No. 1336.

JOHN WHALEN et al., Libellant-,

against

Fishing Steamer WILLIAM B. MURRAY.

Petition of Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1336.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libelant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer William B. Murray is now within this District and is being held subject to the process of this
286 court in the libel heretofore instituted herein by John Whalen, et al. against the fishing steamer William B. Murray, No. 1336 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished

which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith
287 and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at $3.30 delivered		$3006.3
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at $3.65 delivered		3365.3
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.		
To 1187 Tons at $3.10	$3679.70	
To Dock & Trimming charges	44.61	
		3724.3
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at $3.75 delivered		3228.7
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
288		
To 1439 Tons at $3.10	$4460.90	
To Towing & Trimming charges	65.17	
		4526.0
		$17850.7

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer William B. Murray, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her was $4526.07, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer William B. Murray for the value of the said coal so sold

delivered and furnished on July 3, 1914, in the sum of $4526.07 with interest thereon from July 3, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer William B. Murray, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer William B. Murray and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phos-
289 phate & Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 5 hereof and therein set opposite to the names of the said vessels, and it now has and since July 3, 1914, has had, a good and valid maritime lien against the steamer William B. Murray in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on July 3, 1914, as above set forth, in the sum of $4526.07, with interest thereon from July 3, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about July 3, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer William B. Murray, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer William B. Murray, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer William B. Murray, 1439 tons of coal of the reasonable and agreed value of $4526.07. Wherefore, the petitioner has a maritime lien on the steamer William B. Murray for
290 the said agreed value of the said coal in the sum of $4526.07, with interest thereon from July 3, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer William B. Murray and the Atlantic Phosphate & Oil Corporation for use on the steamer William B. Murray, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer William B. Murray and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien

on the steamer William B. Murray for the value of the coal so sold and furnished to her in the sum of $4526.07, with interest thereon from July 3, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer William B. Murray, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer William B. Murray, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer William B. Murray and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since July 3, 1914, has had a good and valid
291 maritime lien against the said steamer William B. Murray for the reasonable and agreed value of the coal so furnished in the sum of $4526.07, with interest thereon from July 3, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libelant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer William B. Murray, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer William B. Murray and in favor of your petitioner for the amount of its said maritime lien, to wit, $4526.07, with interest thereon from July 3, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer William B. Murray be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,
Proctors for Petitioner.

292 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.

[SEAL.] CLETUS KEATING,
Notary Public, 2068, *New York County*.

293 *Libellant's Stipulation for Costs.*

(Filed Dec. 4, 1914, in Admr. #1336.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1336.)

Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1336.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1336.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "William B. Murray," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont &
294 Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21,

1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats
295 "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

296 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or

any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars ($2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars ($2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof
297 was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein.
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

298 *Order to Consolidate with Libel Admiralty No.* 1359 *and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1336.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1336.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1336.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

299 *Stipulation as to Exhibits.*

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY, *Proctor for Libellant.*
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1336.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

300 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said William B. Murray and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer William B. Murray, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

301 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1336.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek

Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1336.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

302 *Opinion of Court.*

(Filed July 10, 1917, in Admr. #1336.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1336.)

This cause together with Admiralty causes, Fishing Steamers Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the
303 matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of..	$14,625.52
1 cargo coal at Tiverton, R. I.	861 tons value of..	3,228.75
Total	5320 tons value of..	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

	Tons.		Value.	
To all steamers mentioned in consolidated libels—				
From Promised Land 2778, less 20%	2222.4	@ 3.28	$7289.48	
To all steamers mentioned in consolidated libels—				
From Tiverton	626.5	@ 3.75	$2349.39	
	2848.9 tons			$9638.87
To the following vessels not yet libelled:				
From Promised Land—				
Str. Portland 148				
Str. Strong 157				
Str. Sanford 3				
Str. East Hampton ... 482				
790, less 20%	632.	@ 3.28	$2072.95	
From Tiverton—				
Str. East Hampton 125.25				
304				
Str. Strong 18.25				
Str. Sandford .... 13.				
Str. Adroit ..... 7.	163.5	@ 3.75	$613.13	
	795.5 tons			$2686.08
That there was used by the factory at Promised Land 891, less 20%	712.8	@ 3.28	$2337.97	
By the factory at Tiverton.	71.	@ 3.75	$266.25	
This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it	891.8	@ 3.28	$2925.10	$5529.32
Total cargoes	5320 tons		Value.....	$17854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to ..... 4459 tons
Other coal belonging to the Atlantic Phosphate & Oil corporation which had been paid for, amounting to ..... 1068 tons

Total ..... 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and
305 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer William B. Murray, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

230.4 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$755.71
And also 118.75 tons of coal at Tiverton, R. I., of the value of $3.75 per ton amounting to	445.31
Or the total sum of	$1201.02
306	
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1201.02, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	210.18
Or a total amount of	$1411.20
Together with costs as taxed, amounting to the sum of	46.50
	$1457.70

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligers: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fourteen Hundred Fifty-seven and 70/100 Dollars ($1457.70), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk*.

Enter July 10, 1917.

ARTHUR L. BROWN, *J*.

307 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpœna Duces Tecum Filed by Libellant.

Subpœna Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1336.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

308 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1336.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is.

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers Herbert N. Edwards, No. 1334, Martin J. Marran, No. 1327, Amagansett No. 1329, and Herbert N. Edwards, No. 2334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket on this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land 4459 tons value of $14,625.52
1 cargo coal at Tiverton, R. I. 861 tons value of 3,228.75

total—5320 tons value of $17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

309

To all steamers mentioned in consolidated libels—

From Promised Land:

	Tons.	Tons.		Value.	Total value.
	2,778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	$2,349.37	$11,461.21

To the following vessels not yet libelled—

From Promised Land:

Str. Portland	148				
Str. Strong	157				
Str. Sanford	3				
Str. East Mampton...	482				
	790		@ $3.28	$2,591.20	
From Tiverton:					
Str. East Hampton..	125.25				
Str. Srtong	18.25				
Str. Sanford	13.				
Str. Adroit	7.				
		163.5	@ $3.75	$613.13	$3,204.33
That there was used by the Factory at Promised Land:	891		@ $3.28	$2,922.48	
By the Factory at Tiverton		71	@ $3.75	266.25	$3,188.73
	4,459	861			$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to..... 4,459 tons

310

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to.. 1,068 tons

A total of..... 5,527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessel from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1,068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the William B. Murray, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of $3,188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have
311 applied the whole or any part of the payment of $2,000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2,000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer William B. Murray from the cargoes of coal in dispute in this action—

288 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$944.64
And also 118.75 tons of coal at Tiverton, R. I., of the value of $3.75 per ton, amounting to.....	$445.31
Or the total sum of.....	$1,389.95
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1,389.95, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of..	271.04
Amounting to	$1,660.99
Together with costs as taxed, amounting to the sum of..	48.75
Or a total amount of.....	$1,709.74

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19,000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

312 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Seventeen Hundred and Nine and 74/100 Dollars ($1,709.74) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. # 1336.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectively shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above en-

313 titled cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamer to recover the sum of Forty-five Hundred Twenty-six and 07/100 Dollars ($4,526.07) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fourteen Hundred Eleven and 20/100 Dollars ($1411.20) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars ($46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Sixteen Hundred and Sixty and 99/100 Dollars ($1660.99) as a maritime lien against *against* said fishing steamer and the sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

314 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty and 99/100 Dollars ($1,660.99) and the said sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.
ARTHUR L. BROWN, *J.*

315 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1336.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain

testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging
316 to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels
317 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of $2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of $2,000, made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land
318 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of $1660.99, together with costs taxed at $48.75, or a total sum of $1709.74.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1336.)

This bond is identical with that printed in record on appeal in Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

319 *Citation on Appeal.*

(Filed in Admr. #1336.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the

city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

320 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1336.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

321 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said

case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

322 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1336.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herber N. Edwards.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
FRANK HEALY,
Proctors for Libellant.

322*a* *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein John Whelan et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the

appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
322*b* Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

322*c* United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

323 United States District Court, District of Rhode Island.

Admiralty. No. 1327.

SIMON POAN et al., Libellant,

against

Fishing Steamer MARTIN J. MARRAN.

Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1327.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libelant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Martin J. Marran is now within this District and is being held subject to the process of this court
324 in the libel heretofore instituted herein by Simon Poan, et al. against the fishing steamer Martin J. Marran, No. 1327 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each

of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith
325 and credit of the maritime liens on the said vessels thus agreed expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at $3.30 delivered		$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at $3.65 delivered		3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.		
To 1187 Tons at $3.10	$3679.70	
To Dock & Trimming charges	44.61	
		3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at $3.75 delivered		3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
326		
To 1439 Tons at $3.10	$4460.90	
To Towing & Trimming charges,	65.17	
		4526.07
		$17850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Martin J. Marran, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was

$3724.31, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Martin J. Marran for the value of the said coal so sold, delivered and furnished on June 9, 1914, in the sum of $3724.31, with interest thereon from June 9, 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Martin J. Marran, and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Martin J. Marran and the other steamers above mentioned, was intended for their use and actually was used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate &
327 Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 3 hereof and therein set opposite to the names of the said vessels, and it now has and since June 9, 1914, has had, a good and valid maritime lien against the steamer Martin J. Marran in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on June 9, 1914, as above set forth, in the sum of $3724.31, with interest thereon from June 9, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth, made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about June 9, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Martin J. Marran, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading, New Jersey, to, and for the use of, the steamer Martin J. Marran, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Martin J. Marran, 1187 tons of coal of the reasonable and agreed value of $3724.31. Wherefore the petitioner has
328 a maritime lien on the steamer Martin J. Marran for the said agreed value of the said coal in the sum of $3724.31, with interest thereon from June 9, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Martin J. Marran and the Atlantic Phosphate & Oil Corporation for use on the steamer Martin J. Marran, the At-

lantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Martin J. Marran and to said Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Martin J. Marran for the value of the coal so sold and furnished to her in the sum of $3724.31, with interest thereon from June 9, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Martin J. Marran, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Martin J. Marran, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Martin J. Marran and to the Atlantic Phosphate & Oil Corporation for her use,
329 and now has and since June 9, 1914, has had a good and valid maritime lien against the said steamer Martin J. Marran for the reasonable and agreed value of the coal so furnished in the sum of $3724.31, with interest thereon from June 9, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libelant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Martin J. Marran, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Martin J. Marran and in favor of your petitioner for the amount of its said maritime lien, to wit, $3724.31, with interest thereon from June 9, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Martin J. Marran be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,
Proctors for Petitioner.

330 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my

own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.
[SEAL.] CLETUS KEATING,
Notary Public, 2068, New York County.

331 *Libellant's Stipulation for Costs.*

(Filed Dec. 4, 1914, in Admr. #1327.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1327.)

Monition on Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1327.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1327.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer "Martin J. Marran," her engines, etc., as the same are pro-
332 ceeded against on the intervening libel of Piedmont & Georges Creek Coal Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar

Schmidtmann, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co., as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation, et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of the Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter
333 called "said corporation," was the owner of the steam fishing boats "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

334 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal

mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that on or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars ($2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars ($2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount
335 thereof was not credited on the open account but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein,
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:

I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by per-

sons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A. D. 1915.

HENRY W. GARDNER,
Notary Public.

336 *Order to Consolidate with Libel Admiralty No.* 1359 *and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1327.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1327.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All filed in Admr. #1327.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evidence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

337 *Stipulation as to Exhibits.*

(Filed in Admr. 1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel

and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1327.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

338 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said "Martin J. Marran and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation, and was necessary and proper for the use of said steamer Martin J. Marran and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

339 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1327.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimants' Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1327.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

340 *Opinion of Court.*

(Filed July 10, 1917, in Admr. #1327.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and entered July 10, 1915, in Admr. #1327.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Amagansett No. 1329, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subse-

quently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the
341 matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of....	$14,625.52
1 cargo coal at Tiverton, R. I.....	861 tons value of....	3,228.75
Total	5320 tons value of....	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

	Tons.	Value.	
To all steamers mentioned in consolidated libels—			
From Promised Land 2778, less 20%	2222.4 @ 3.28	—$7289.48	
To all steamers mentioned in consolidated libels—			
From Tiverton	626.5 @ 3.75	—$2349.39	
	2848.9 tons		$9638.87
To the following vessels not yet libelled:			
From Promised Land—			
Str. Portland 148			
Str. Strong 157			
Str. Sanford 3			
Str. East Hampton .. 482			
790, less 20%	632. @ 3.28	—$2072.95	
From Tiverton—			
Str. East Hampton 125.25			

342

Str. Strong 18.25			
Str. Sandford .... 13.			
Str. Adroit ..... 7.	163.5 @ 3.75	— $613.13	
	795.5 tons		$2686.08
That there was used by the factory at Promised Land 891, less 20%	712.8 @ 3.28	—$2337.97	
By the factory at Tiverton	71. @ 3.75	— $266.25	

This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it	891.8 @ 3.28	$2925.10	$5529.32
Total cargoes	5320 tons	Value.....	$17854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to ..... 4459 tons
Other coal belonging to the Atlantic Phosphate & Oil corporation which had been paid for, amounting to... 1068 tons

Total ..... 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and
343 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Martin J. Marran, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

200.8 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to	$658.62
And also 41.75 tons of coal at Tiverton, R. I., at the value of $3.75 per ton, amounting to	156.56
Or the total sum of	$815.18

344

And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $815.18, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of	142.66
Or a total amount of	$957.84
Together with costs as taxed, amounting to the sum of...	46.50
	$1004.34

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligers: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Ten Hundred Four and 34/100 Dollars ($1004.34), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter July 10, 1917.

ARTHUR L. BROWN, *J.*

345 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpœna Duces Tecum Filed by Libellant.

Subpœna Duces Tecum and Officer's Return Thereon.

Evidence in Support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1327.)

(The above will be found in the record on appeal of that case in Admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

346 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1336.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Herbert N. Edwards, No. 1334, Amagansett, No. 1329, and Rollin E. Mason, No. 1334, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459	tons value of..	$14,625.52
1 cargo coal at Tiverton, R. I.	861	tons value of..	3,228.75
Total	5320	tons value of..	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

347

To all steamers mentioned in consolidated libels—

	Tons.	Tons.		Value.	Total value
From Promised Land..	2778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	2,349.37	$11,461.21
To the following vessels not yet libelled—					
From Promised Land:					
Str. Portland	148				
Str. Strong	157				
Str. Sanford	3				
Str. East Hampton	482				
	790		@ $3.28	$2,591.20	
From Tiverton:					
Str. East Hampton ..	125.25				
Str. Strong	18.25				
Str. Sanford	13.				
Str. Adroit	7.				
		163.5	@ $3.75	$613.13	$3,204.33
That there was used by the Factory at Promised Land	891		@ $3.28	$2,922.48	
By the Factory at Tiverton		71	@ $3.75	266.25	$3,188.73
	4459	861			$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to ..... 4459 tons

348

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to ..... 1068 tons

A total of ..... 5527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Martin J. Marran, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of $3188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or
349 about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Martin J. Marran from the cargoes of coal in dispute in this action—

251 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$823.28
And also 41.75 tons of coal at Tiverton, R. I., of the value of $3.75 per ton amounting to.....	$156.56
Or the total sum of.....	$979.84
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $979.84, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of...	191.07
Amounting to	$1170.91
Together with costs as taxed, amounting to the sum of...	48.75
Or a total amount of.....	$1219.66

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

350 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Twelve Hundred Nineteen and 66/100 Dollars ($1219.66) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1327.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above en-

351 titled cause then pending in the District Court of the United States for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty-seven Hundred twenty-four and 31/100 Dollars ($3724.31) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Nine Hundred Fifty-seven and 84/100 Dollars ($957.84) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars ($46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant re-

opened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Eleven Hundred and Seventy and 91/100 Dollars ($1,170.91) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

352 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty and 99/100 Dollars ($1,660.99) and the said sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal Allowed.
November 9, 1917.
ARTHUR L. BROWN, *J.*

353 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1327.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73-75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont

& Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel libelled, as appears on pages 80-82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging
354 to the said claimant, although said coal was delivered to said claimant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84-85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels
355 belonging to the Atlantic Phosphate & Oil Corporation for coal delivered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of $2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of $2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, either by pro rata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case,

ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land by said
356 steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of $1170.91, together with costs taxed at $48.75, or a total sum of $1219.66.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1327.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

357 *Citation on Appeal.*

(Filed in Admr. #1327.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District

Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

358 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1327.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

359 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the

record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

360 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1327.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
FRANK HEALY,
Proctors for Libellant.

360a *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for District of Rhode Island, wherein Simon Poan et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the

appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within-named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
360*b* Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

360c United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1332.

Fishing Steamer AMAGANSETT.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

361 United States District Court, District of Rhode Island.

Admiralty. No. 1329.

W. OTIS PAYNE et al., Libellant-,
against
Fishing Steamer AMAGANSETT.

Petition of Piedmont & Georges Creek Coal Company to Intervene.

Petition of Intervention of Piedmont & Georges Creek Coal Company.

(Filed Dec. 4, 1914, in Admr. #1329.)

To the Hon. Arthur L. Brown, United States District Judge for the District of Rhode Island:

The petition of intervention of the Piedmont & Georges Creek Coal Company, praying to be allowed to intervene as co-libelant herein, respectfully shows, to this Court as follows:

First. The petitioner was at all the times mentioned herein, and now is, a corporation existing under and by virtue of the laws of the State of Maryland, and at all such times was engaged in dealing in coal.

Second. The fishing steamer Amagansett is now within this District and is being held subject to the process of this Court in the libel heretofore instituted herein by W. Otis Payne, et al.
362 against the fishing steamer Amagansett, No. 1329 on the Admiralty Docket of this Court.

Third. At or about the beginning of the fishing season of 1914, the Atlantic Phosphate & Oil Corporation was the owner of the steam fishing boats Herbert N. Edwards, Rollin E. Mason, Martin J. Marran, Amagansett and William B. Murray. At this time it was indebted in a large sum to your petitioner for coal previously supplied, and when it sought to secure coal for the use of the said vessels during the fishing season of 1914, your petitioner was unwilling to extend any further credit to the Atlantic Phosphate & Oil Corporation on its own account. On information and belief, the petitioner alleges that the Atlantic Phosphate & Oil Corporation was unable to obtain elsewhere credit on its own account for coal to

operate its fishing boats and, unless coal had been furnished to it, would have been unable to operate its said fishing boats during the season of 1914. Accordingly, being desirous of purchasing coal from the petitioner, the Atlantic Phosphate & Oil Corporation undertook and agreed with the petitioner, in consideration of the sale and delivery to the Atlantic Phosphate & Oil Corporation of certain coal at St. Georges Pier, Staten Island, and Port Reading, New Jersey, during the months of May, June, and July, 1914, to give maritime liens to the petitioner on each of the several steam fishing boats above named, in proportion to the amounts of the coal so furnished which was used by each boat, or in such amounts as the Atlantic Phosphate & Oil Corporation might allocate as liens against the said several steamers as security for the purchase price of said coal.

Fourth. In pursuance of the said contract and on the faith and credit of the Maritime liens on the said vessels thus agreed
363 expressly created thereby, the petitioner sold and delivered coal to the Atlantic Phosphate & Oil Corporation at the times, in the amounts, on the terms and of the reasonable and agreed values stated in the following schedule:

To Steam Ship "Herbert N. Edwards & Owners." Coal forwarded by the boat "Harry Husted" from Port Reading, N. J., as per B/L dated May 19, 1914. To 911 Tons at $3.30 delivered		$3006.30
To Steam Ship "Rollin E. Mason & Owners." Coal forwarded by the boat "Crystal" from Port Reading, N. J., as per B/L dated May 23, 1914. To 922 Tons at $3.65 delivered		3365.30
To Steam Ship "Martin J. Marran & Owners." Coal forwarded by the boat "Rhode Island" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 9, 1914.		
To 1187 Tons at $3.10	$3679.70	
To Dock & Trimming charges	44.61	
		3724.31
To Steam Ship "Amagansett & Owners." Coal forwarded by the boat "H. Walker" from St. George Coal Piers, S. I., N. Y., as per B/L dated June 20/14. To 861 Tons at $3.75 delivered		3228.75
To Steam Ship "Wm. B. Murray & Owners." Coal forwarded by the Barge as per B/L dated July 3, 1914.		
364		
To 1439 Tons at $3.10	$4460.90	
To Towing & Trimming charges	65.17	
		4526.07
		$17850.73

Fifth. The reasonable and agreed value of coal sold and delivered as aforesaid by the petitioner to the Atlantic Phosphate & Oil Corporation for use by the steamer Amagansett, and allocated by the said Atlantic Phosphate & Oil Corporation as a lien against her, was $3228.75, and the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the sale and delivery to it of the coal as aforesaid, that the petitioner should have a maritime lien on the steamer Amagansett for the value of the said coal so sold, delivered and furnished on June 20, 1914, in the sum of $3228.75, with interest thereon from June 2 , 1914.

Sixth. The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the steamer Amagansett and the other steamers above mentioned, and was necessary and proper for the use of the said steamer Amagansett and the other steamers above mentioned, was intended for their use and actually used by them.

Seventh. By reason of the premises and by virtue of the Statutes of the United States, especially the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate &
365 Oil Corporation for use by its said steamers as aforesaid and now has good and valid maritime liens against the said steamers therefor in the amounts respectively allocated as liens against the said steamers of the Atlantic Phosphate & Oil Corporation as shown in the schedule in Article 3 hereof and therein set opposite to the names of the said vessels, and it now has and since June 20, 1914, has had, a good and valid maritime lien against the steamer Amagansett in pursuance of the contract aforesaid and by reason of the sale and delivery of the coal aforesaid on June 20, 1914, as above set forth, in the sum of $3228.75, with interest thereon from June 20, 1914.

For a Second Cause of Action.

The petitioner realleges all and singular the matters alleged in articles first, second, third, fourth and fifth hereof with the same force and effect as if they were herein repeated at length, and further alleges as follows:

Eighth. In pursuance of the contract above set forth made by and between the petitioner and the Atlantic Phosphate & Oil Corporation, and on or about June 20, 1914, on the order and at the request of the Atlantic Phosphate & Oil Corporation, the owner of the steamer Amagansett, or of a person or persons by it duly authorized, the petitioner sold, delivered, furnished and supplied at Port Reading New Jersey, to, and for the use of, the steamer Amagansett, and to the Atlantic Phosphate & Oil Corporation, for use by the steamer Amagansett, 861 tons of coal of the reasonable and agreed
366 value of $3228.75. Wherefore, the petitioner has a maritime lien on the steamer Amagansett for the said agreed value of

the said coal in the sum of $3228.75, with interest thereon from June 20, 1914.

Ninth. On the delivery of the said coal as aforesaid to, and for the use of, the steamer Amagansett and the Atlantic Phosphate & Oil Corporation for use on the steamer Amagansett, the Atlantic Phosphate & Oil Corporation expressly agreed, in consideration of the said sale and delivery to the steamer Amagansett and to sa. Atlantic Phosphate & Oil Corporation for use on her of the aforesaid coal, that the petitioner should have a maritime lien on the steamer Amagansett for the value of the coal so sold and furnished to her in the sum of $3228.75, with interest thereon from June 20, 1914.

Tenth. The coal sold, delivered and furnished, as aforesaid, to and for the use of the steamer Amagansett, and to the Atlantic Phosphate & Oil Corporation for her use, was, as petitioner is informed and believes, necessary for the use of the steamer Amagansett, and was used by her in her operations as part of the fishing fleet of the Atlantic Phosphate & Oil Corporation.

Eleventh. By reason of the premises and by virtue of the Statutes of the United States and especially of the Act of Congress of June 23, 1910, entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries," the libelant had at the time the said coal was so sold, delivered and furnished to the Atlantic Phosphate & Oil Corporation and for the use of the steamer Amagansett and to the Atlantic Phosphate & Oil Corporation for her use, and now has and since June 20, 1914, has had a good and valid mari-
367 time lien against the said steamer Amagansett for the reasonable and agreed value of the coal so furnished in the sum of $3228.75 with interest thereon from June 20, 1914.

Twelfth. All and singular the premises of this petition are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it be allowed to intervene as co-libelant herein and that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the fishing steamer Amagansett, her engines, boilers, tackle, apparel, etc., and that all persons having an interest, or claiming to have any interest therein, be cited to appear and answer the matters alleged in this petition, and that a decree be entered herein against the steamer Amagansett and in favor of your petitioner for the amount of its said maritime lien, to wit, $3228.75, with interest thereon from June 20, 1914, together with the costs and disbursements of the petitioner in this action, and that the fishing steamer Martin J. Marran be condemned and sold to pay the petitioner's claim as aforesaid, and that the Court will grant to the petitioner such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
FRANK HEALY,
Proctors for Petitioner.

368 STATE OF NEW YORK,
County of New York, ss:

John M. Woolsey, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, one of the proctors for the petitioner herein. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements and affidavits by persons having knowledge of the matters mentioned in the petition.

The reason that this verification is not made by the petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them is within the State of New York or within the State of Rhode Island.

JOHN M. WOOLSEY.

Sworn to before me this 30th day of November, 1914.
[SEAL.] CLETUS KEATING,
Notary Public, 2068, *New York County*

369 *Libellant's Stipulation for Costs.*

(Filed Dec. 4, 1914, in Admr. #1329.)

Claim of I. R. Oeland and Alfred C. Coxe, Jr., Receivers of Atlantic Phosphate & Oil Corporation.

(Filed Dec. 7, 1914, in Admr. #1329.)

Monition on Intervening Libel of Piedmont & George Creek Coal Co.

(Filed Dec. 5, 1914, in Admr. #1329.)

(The above Stipulation, Claim and Monition being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.)

Answer to Intervening Libel of Piedmont & Georges Creek Coal Co.

(Filed Mar. 9, 1915, in Admr. #1329.)

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I. R. Oeland and Alfred C. Coxe, Jr., as Receivers of the Atlantic Phosphate and Oil Corporation, the claimants of the Fishing Steamer

"Amagansett," her engines, etc., as the same are proceeded against on the intervening libel of Piedmont & Georges Creek Coal
370 Co. in a cause of contract, civil and maritime, answer said intervening libel and complaint as follows:

First. That they were appointed ancillary receivers of Atlantic Phosphate and Oil Corporation in an action entitled "Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate and Oil Corporation, Defendant," by an order of this Court dated October 21, 1914, and duly qualified as such receivers and have ever since been acting in that capacity.

That on December 31, 1914, an ancillary action was commenced in this Court by Astor Trust Co. as trustee, Plaintiff, against Atlantic Phosphate and Oil Corporation et al., Defendant-, for the foreclosure of the general mortgage (known as Atlantic Phosphate & Oil Corporation Refunding Gold Bond Mortgage, dated July 1, 1913) on all the property and assets of Atlantic Phosphate & Oil Corporation, and that thereupon, by an order of this Court dated December 31, 1914, the above mentioned action of Waldemar Schmidtmann, Plaintiff, against Atlantic Phosphate & Oil Corporation, Defendant, and the foreclosure action were duly consolidated and the receivership extended to the foreclosure action and the said receivers have duly qualified under such order and are now acting as such receivers under both actions.

Second. They admit the allegations of Articles First and Second of said libel.

Third. They admit the allegations of Article Third of said libel that the Atlantic Phosphate and Oil Corporation, hereinafter called "said corporation," was the owner of the steam fishing boats
371 "Herbert N. Edwards," "Rollin E. Mason," "Martin J. Marran," "Amagansett," and "William B. Murray" and admit that said corporation was indebted on an open account to said libelant but, upon information and belief, they deny the allegations of said Article Third, that petitioner was unwilling to extend credit to said corporation on its own account and that said corporation was unable to obtain credit on its own account and that the said corporation ever agreed with the libelant, in consideration of the sale and delivery of coal, to give maritime liens to the petitioner on each of the steam fishing boats named in said libel in proportion to the amount of the coal so furnished and used by each of said boats or in such amounts as the said corporation might allocate as liens against said several steamers.

Fourth. Upon information and belief they deny each and every allegation of Articles Fourth, Fifth, Sixth and Seventh of said libel.

Fifth. As to the second cause of action in said libel, they admit or deny, as the case may be, all and singular the matters alleged in Articles First, Second, Third, Fourth and Fifth of said libel as they have heretofore admitted or denied the allegations in said Articles with respect to the first cause of action.

Sixth. Upon information and belief they deny each and every allegation contained in Articles Eighth, Ninth, Tenth and Eleventh of libellant's second cause of action.

Seventh. They admit that the matters as stated in said libel are within the admiralty and maritime jurisdiction of this Court but deny on information and belief that all and singular the premises, as stated in said libel, are true.

372 Eighth. Further answering said libel, the claimants allege upon information and belief that the cargoes of coal mentioned in said libel were billed and shipped to the said corporation upon open account and not upon the credit of said steamers or any of them or for delivery to said steamers or any of them, and that *on* or about September, 1914, after said bills had become due, an agent or representative of said libelant called at the offices of said corporation and induced or procured the agents or employees of said corporation without authority from said corporation, to alter the bills for said cargoes of coal by pasting on the bills on file in the offices of said corporation a typewritten bill-head purporting to show that said coal had been shipped to the five steamers mentioned in said libel, whereas in truth and in fact said bills showed that said shipments were made on open account and on the credit of the said corporation and not on the credit of said steamers or for delivery to said steamers.

The claimants further allege upon information and belief that in addition to said open account against said corporation, the libelant held three notes of the corporation, one for Two Thousand Twenty and 02/100 Dollars ($2020.02), due October 26, 1914, one for Three Thousand Thirty-two and 40/100 Dollars ($3032.40), due November 14, 1914, and one for Thirty-eight Hundred Dollars ($3800.), due November 14, 1914, said notes being secured by mortgage bonds of the said corporation, and that on July 24, 1914, said corporation gave a draft on Proctor & Gamble in the sum of Two Thousand Dollars ($2000.) to the libelant as a payment upon the open account with said libelant, for which the said libelant now claims a maritime lien against said steamers, and was accepted as such payment by said libelant; that said draft was paid but that the amount thereof was not credited on the open account

373 but was credited on the said notes secured by mortgage bonds heretofore referred to.

Ninth. That all and singular the premises are true.

Wherefore, the claimants pray that said libel may be dismissed with costs.

I. R. OELAND AND
ALFRED C. COXE, JR.,
Receivers of Atlantic Phosphate & Oil Corporation, the Claimants Herein,
By GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors.

STATE OF RHODE ISLAND,
County of Providence:

William H. Thornley, being duly sworn, says:
I am a member of the firm of Gardner, Pirce & Thornley, proctors of the claimants herein. The foregoing answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements by persons having knowledge of the matters mentioned in the answer and the books, records and files of the said Atlantic Phosphate & Oil Corporation.

WILLIAM H. THORNLEY.

Subscribed and sworn to, before me, this ninth day of March, A D. 1915.

HENRY W. GARDNER,
Notary Public.

374 *Order to Consolidate with Libel Admiralty No.* 1359 *and Release from Certain Bonds.*

(Filed June 22, 1915, in Admr. #1329.)

Warrant of Delivery.

(Filed June 29, 1915, in Admr. #1329.)

The above Order and Warrant being identical except as to name of vessel with those set forth in record on appeal in Admr. #1334, the latter are hereby incorporated by reference under stipulation infra.

Evidence for Libellant, for Claimant, and for Libellant in Rebuttal.

Stipulation Filed on Behalf of Claimant and of Libellant with Reference to Evidence.

Libellant's Exhibits and Claimant's Exhibits.

(All Filed in Admr. #1329.)

(The above will be found in the record on Appeal of that case in admiralty numbered 1359, entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger, with which case this case has been consolidated, in accordance with the order appearing above in this record. By stipulation of parties said evi-

dence, stipulations and exhibits are incorporated by reference as a part of this record on appeal, with the same force and effect as if the same had been printed fully herein.)

375 *Stipulation as to Exhibits.*

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that Claimant's Exhibits 2, 3, 4, 5, 6 and 12, may be omitted from the printed record on appeal, and that the original be sent to the Clerk of the Circuit Court of Appeals in Boston, and that copies for the use of counsel and the Circuit Court of Appeals may be used on the appeal herein with the same force and effect as if they had been made a part of the printed record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

Motion to Amend Libel.

(Filed Aug. 20, 1915, in Admr. #1329.)

The Libellant, Piedmont & Georges Creek Coal Company, prays leave to amend the libel heretofore filed in the above entitled cause, in accordance with the testimony produced at the trial of said cause, as follows:

In Article Third, page 2, after the words, "William B. Murray," insert, "and twelve other fishing steamers, against seven of which a libel has been filed in this Honorable Court, numbered 1359, with which case this cause is now consolidated."

376 That Article Sixth of said libel, page 4, may be amended so as to read as follows:

"The aforesaid coal was sold, delivered and furnished as aforesaid to the Atlantic Phosphate & Oil Corporation solely on the credit of the said Amagansett and all the other fishing steamers belonging to said Atlantic Phosphate & Oil Corporation and was necessary and proper for the use of said steamer Amagansett, and all said fishing steamers, and this Libellant was informed, was intended for their use and was actually used by them."

FRANK HEALY,
Proctor for Petitioner.

STATE OF RHODE ISLAND,
County of Providence:

I, Frank Healy, being duly sworn, say that I am one of the Proctors for the Petitioner herein; that the foregoing petition is true to the best of my knowledge, information and belief; the source of my

information and the reasons for my belief is the testimony that was produced at the hearing of this cause on June 14th, 1915, and information communicated to me by persons having knowledge of the matters mentioned in this petition. The reason that this verification is not made by the Petitioner is that it is a corporation, and the reason that it is not made by one of its executive officers is that none of them are within the State of Rhode Island or the State of New York.

FRANK HEALY.

Subscribed and sworn to before me this 17th day of August, A. D. 1915.

GEORGE L. MARSH,
Notary Public.

377 *Opinion of Court.*

(Filed January 29, 1917, in Admr. #1329.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were set forth in full herein.)

Claimant's Objections to the Draft Decree Filed by the Libellant.

(Filed July 9, 1915, in Admr. #1329.)

(These objections are identical with those printed in the record on appeal of Admr. #1334, which by stipulation are hereby incorporated by reference.)

378 *Opinion of Court.*

(Filed July 10, 1917, in Admr. #1329.)

(This opinion will also be found in the record on appeal of admiralty case numbered 1359, entitled, "Piedmont & Georges Creek Coal Co. v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which this case was consolidated, in accordance with the order appearing above in this record, and by stipulation of parties said opinion is incorporated by reference into this record on appeal with the same force and effect as though the same were printed in full herein.)

Final Decree.

(Filed July 3, 1915, and Entered July 10, 1915, in Admr. #1329.)

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Herbert N. Edwards No. 1334, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and submitted upon the arguments and briefs by the advocates of the respective parties, and due deliberation being had in the premises:

On the 29th day of January, 1917, it was found and determined by the Court that the Libellant was entitled to maritime liens upon the respective vessels which used the coal, the amount to be subsequently determined upon the settlement of the terms of the decree, in case of objection; and on the 29th day of June, 1917, the
379 matter coming on for hearing by agreement of the parties upon the settlement of the terms of the decree, after hearing counsel for the respective parties, and due deliberation being had:

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459 tons value of....	$14,625.52
1 cargo coal at Tiverton, R. I.....	861 tons value of....	3,228.75
Total	5320 tons value of....	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

	Tons.	Value.	
To all steamers mentioned in consolidated libels—			
From Promised Land 2778, less 20%	2222.4 @ 3.28	$7289.48	
To all steamers mentioned in consolidated libels—			
From Tiverton	626.5 @ 3.75	$2349.39	
	2848.9 tons		$9638.87
To the following vessels not yet libelled:			
From Promised Land—			
Str. Portland 148			
Str. Strong 157			
Str. Sanford 3			
Str. East Hampton .. 482			
790, less 20%	632. @ 3.28	$2072.95	

15—675

From Tiverton—

Str. East Hampton	125.25		
380			
Str. Strong	18.25		
Str. Sandford	13.		
Str. Adroit	7.	163.5 @ 3.75— $613.13	$2686.08
		795.5 tons	
That there was used by the factory at Promised Land 891, less 20%		712.8 @ 3.28—$2337.97	
By the factory at Tiverton		71. @ 3.75— $266.25	
This left unaccounted for, but used by the Atlantic Phosphate & Oil Corporation at Promised Land where Libellant cannot trace it		891.8 @ 3.28—$2925.10	$5529.32
Total cargoes		5320 tons Value.....	$17854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal were delivered there amounting to ..... 4459 tons

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to... 1068 tons

Total ..... 5527 tons

That the coal was all mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation, either in its factory or for its fleet:

It is therefore, ordered, adjudged and decreed that the Libellant is not entitled to a maritime lien for the entire amount of coal that was used by each vessel, but that the actual amount of coal used by each vessel shall be reduced by 20%, which for all practical purposes, is the proportion of coal that was at Promised Land and
381 which had been paid for at the time that the respective vessels received all the coal which they consumed after the delivery of these four cargoes.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, that there was furnished to, and used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton, and also by it in its business, where the Libellant was unable to trace the same, as determined by the Court, coal to the total value of Fifty-five Hundred Twenty-nine and 33/100 Dollars ($5529.33), payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal furnished and used by the Atlantic Phosphate & Oil Corporation, but which the Libellant has been unable to trace to the vessels, and for which it has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Amagansett, after all credits have been given and deductions made in accordance with the Opinion heretofore filed in this case—

393.6 tons of coal at Promised Land, Long Island of the value of $328 per ton, amounting to	$1291.01
382 and that said Libellant is justly entitled to have and recover from said fishing steamer said sum of 1291.01, together with interest thereon from August 1, 1914 to July 1, 1917, amounting to the further sum of ..	225.93
or a total amount of	$1516.94
together with costs as taxed, amounting to the sum of ...	46.50
	$1563.44

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligers: it is further

Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Fifteen Hundred Sixty three and 44/100 Dollars ($1563.44), hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment of said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before Aug. 1, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 10th day of July, A. D. 1917.

THOMAS HOPE, *Clerk.*

Entered July 10, 1917.

ARTHUR L. BROWN, *J.*

383 *Libellant's Motion to Reopen Case and Introduction of Further Testimony.*

Petition for Subpœna Duces Tecum Filed by Libellant.

Subpœna Duces Tecum and Officer's Return Thereon.

Evidence in support of Libellant's Motion to Reopen Case.

Interlocutory Order to Reopen Case for Production of Further Testimony.

Interlocutory Order to Amend Final Decree.

(Filed in Admr. #1329.)

(The above will be found in the record on appeal of that case in admiralty numbered 1359 entitled, "Piedmont & Georges Creek Coal Company v. Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger," with which case this case has been consolidated in accordance with the order appearing above in this record, and by stipulation of parties have been and are incorporated by reference into this record on appeal with the same force and effect as if the same had been printed fully herein.)

384 *Amended Final Decree.*

(Filed Nov. 1, 1917, in Admr. #1329.)

Pursuant to the order entered by this Court on the 19th day of October, A. D. 1917, directing the amendment of the final decree now on file, it is

Ordered, adjudged and decreed that said decree entered herein on the 10th day of July, A. D. 1917, be, and the same is hereby amended so as to read as follows:—

This cause, together with Admiralty causes, Fishing Steamers William B. Murray, No. 1336, Martin J. Marran, No. 1327, Herbert N. Edwards, No. 1334, and Rollin E. Mason, No. 1333, having been consolidated with the cause of the fishing steamers Walter Adams, and others, Admiralty No. 1359, all on the docket of this Court, and all having been heard on the pleadings and proofs therein, and the further consideration of the testimony offered by the Libellant on the 19th day of October, 1917, and due deliberation being had in the premises, it is found and determined by the Court that the Libellant is entitled to maritime liens upon the respective vessels which used the coal in dispute, for the amounts now shown by the evidence produced in this cause and hereinafter set forth.

It appearing that the Libellant furnished to the Atlantic Phosphate & Oil Corporation on open account for the use of its fleet—

4 cargoes coal at Promised Land	4459	tons value of..	$14,625.52
1 cargo coal at Tiverton, R. I.	861	tons value of..	3,228.75
Total	5320	tons value of..	$17,854.27

And it appearing from the testimony that the distribution of this coal was as follows:

385

To all steamers mentioned in consolidated libels:

	Tons.	Tons.		Value.	Total value.
From Promised Land ..	2778		@ $3.28	$9,111.84	
From Tiverton		626.5	@ $3.75	2,349.37	$11,461.21

To the following vessels not yet libelled:

From Promised Land—

Str. Portland	148				
Str. Strong	157				
Str. Sanford	3				
Str. East Hampton	482				
	790		@ $3.28	$2,591.20	

From Tiverton—

Str. East Hampton ...	125.25				
Str. Strong	18.25				
Str. Sanford	13.				
Str. Adroit	7.				
		163.5	@ $3.75	$613.13	$3,204.33
That there was used by the Factory at Promised Land	891		@ $3.28	$2,922.48	
By the Factory at Tiverton		71	@ $3.75	266.25	$3,188.73
	4459	861			$17,854.27

It further appearing that there was on hand at Promised Land at the time the four cargoes of coal in dispute were delivered there amounting to ..... 4459 tons.

386

Other coal belonging to the Atlantic Phosphate & Oil Corporation which had been paid for, amounting to..	1068 tons
A total of	5527 tons

That all the coal was mingled together, and that the entire amount of coal was used by the Atlantic Phosphate & Oil Corporation for its fleet and in its factory.

It further appearing, however, from the evidence that before any coal was charged to the vessels from the four cargoes in question delivered at Promised Land, as herein before set forth, that there was deducted proportionately from the total consumption of said vessels, respectively, at Promised Land, the amount of 1068 tons—that amount having been the quantity on hand when the first of the four cargoes was delivered there.

It is, therefore, ordered, adjudged and decreed that the Libellant is entitled to a maritime lien for the value of the coal that the Amagansett, used as hereinbefore and hereinafter shown and set forth.

It also appearing that over and above the amount for which the Libellant claims a lien against the respective vessels, libelled and not libelled, there was used by the factories of the Atlantic Phosphate & Oil Corporation at Promised Land and at Tiverton in its business out of that furnished by the Libellant, coal to the total value of $3188.73, payment for which was due and unpaid on August 24, 1914:

It is, therefore, ordered, adjudged and decreed that such amount, being due and unpaid, the Claimants are not entitled to have
387 applied the whole or any part of the payment of $2000 made on or about August 24, 1914, to reduce any of the maritime liens for coal furnished to and used by the respective vessels mentioned in the consolidated cause as determined herein, but that said sum of $2000 should be applied in reduction of the open account due and unpaid, for coal used by the Atlantic Phosphate & Oil Corporation in its said factories from that furnished by the Libellant, and for which the Libellant has no security.

It is ordered, adjudged and decreed by the Court that the Libellant, the Piedmont & Georges Creek Coal Company, did provide and furnish to the fishing steamer Amagansett from the cargoes of coal in dispute in this action—

492 tons of coal at Promised Land, Long Island, of the value of $3.28 per ton, amounting to.....	$1613.76
And that said Libellant is justly entitled to have and recover from said fishing steamer said sum of $1613.76, together with interest thereon from August 1, 1914, to November 1, 1917, amounting to the further sum of..	314.68
Amounting to	$1928.44
Together with costs as taxed, amounting to the sum of..	48.75
Or a total amount of	$1977.19

And it further appearing that said fishing steamer was released in this cause upon the filing of a bond in the sum of $19000.00 by the Claimant, the Seaboard Fisheries Company, and its surety, the Equitable Surety Company, as obligors: it is further

388 Ordered, adjudged and decreed, that the Libellant recover against the said Claimant and its said surety said sum aforesaid of principal, interest and costs, together making the sum of Nineteen Hundred Seventy-seven and 79/100 Dollars ($1977.19) hereinbefore decreed against the said fishing steamer; and that the Libellant may have its execution against said obligors, or either of them, to enforce payment on said amount hereinbefore decreed.

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree on or before November 3rd, 1917, the Libellant may have execution forthwith thereafter to enforce satisfaction thereof.

Entered as Decree of Court this 1st day of November, A. D. 1917.

THOMAS HOPE, *Clerk.*

Enter November 1, 1917.

ARTHUR L. BROWN.

Petition for Appeal.

(Filed Nov. 9, 1917, in Admr. #1329.)

To the Honorable the United States Circuit Court of Appeals for the First Circuit:

The petition of Seaboard Fisheries Company, the claimant herein, respectfully shows as follows:

1. On or about December 4, 1914, the Piedmont & Georges Creek Coal Company filed an intervening petition in the above entitled cause then pending in the District Court of the United States
389 for the District of Rhode Island against the above named fishing steamer to recover the sum of Thirty-two Hundred Twenty-eight and 75/100 Dollars ($3228.75) alleged to be due the libellant from said fishing steamer, with interest and costs, as by reference to said libel will more fully appear.

2. On or about the ninth day of March, A. D. 1915, the claimant duly appeared and filed its answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

3. In June, 1915, said cause came on for hearing before the Honorable Arthur L. Brown, Judge of said District Court, and such proceedings were had, that on July 10, 1917, a final decree was made and entered in said suit whereby it was adjudged that the libel be sustained and that the libellant recover the sum of Fifteen Hundred Sixteen and 94/100 Dollars ($1516.94) as a maritime lien against said fishing steamer and the sum of Forty-six and 50/100 Dollars ($46.50) as costs.

4. On October 19, 1917, the said Honorable Arthur L. Brown, Judge of said District Court, upon the motion of said libellant reopened said case for the production of further testimony therein and after the production of such additional testimony ordered that said final decree be amended in certain particulars and on November 1st, 1917, entered an amended final decree in said suit whereby it was

adjudged that the libel be sustained and that the libellant recover the sum of Nineteen Hundred and Twenty-eight and 44/100 Dollars ($1928.44) as a maritime lien against said fishing steamer and the sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

390 5. The above named claimant and appellant is advised and insists that said amended final decree is erroneous in that it sustains said libel and decrees payment to the said libellant of the said sum of Sixteen Hundred and Sixty-one and 91/100 Dollars ($1661.91) and the said sum of Forty-eight and 75/100 Dollars ($48.75) as costs.

6. For this and other reasons the above named claimant and appellant appeals from said amended final decree to the United States Circuit Court of Appeals for the First Circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said District Court, and upon new pleadings and proofs to be introduced in this Court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the First Circuit, and that said amended final decree may be reversed and the said libel be dismissed with costs to the said claimant in the said District Court and in this Court.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimant.

Appeal allowed.
November 9, 1917.
ARTHUR L. BROWN, *J.*

391 *Assignment of Errors by Claimant.*

(Filed Nov. 9, 1917, in Admr. #1329.)

The claimant herein, Seaboard Fisheries Company, assigns the following errors in the decision, decree and proceedings of the District Court of the United States for the District of Rhode Island in the above entitled cause:

1. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton, offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used, which was delivered by said libellant to said claimant at Promised Land and not delivered or furnished to the said vessel libelled, as appears on pages 73–75 of the record in Consolidated Cause #1359.

2. In that said Court at the trial of said cause admitted certain testimony of Charles R. Horton offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the claimant, the substance of which was that said witness was allowed to testify how a cargo of 911 tons of coal was used by several vessels belonging to the said claimant, although said coal was delivered to said claimant at Promised Land and was not delivered or furnished to the said vessel

libelled, as appears on pages 80–82 of the record in Consolidated Cause #1359.

3. In that said Court at the trial of said cause admitted certain testimony of Charles H. Milligan offered by the libellant, Piedmont & Georges Creek Coal Co., and objected to by the said claimant, the substance of which was that said witness was allowed to testify how a certain cargo of coal was used by various vessels belonging to the said claimant, although said coal was delivered to said claim-
392 ant at Tiverton, Rhode Island, and was not delivered or furnished to the said vessel libelled, as appears on pages 84–85 of the record in Consolidated Cause #1359.

4. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" to the said vessel upon the credit of said vessel and not upon the credit of the owners thereof.

5. In that said Court held that the coal for which the maritime lien is claimed in said libel was "furnished" in accordance with the provisions of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

6. In that said Court held that the libellant was entitled to a maritime lien upon the vessel libelled for such coal as was actually used by said vessel.

7. In that said Court held that the libellant was entitled to a maritime lien for coal used by the said vessel although said coal had been delivered to the owner of the said vessel for general purposes and mixed with other coal already paid for and with coal used for non-maritime purposes.

8. In that said Court held that the libellant was entitled to a maritime lien for coal used by said vessel under and by virtue of the Act of June 23, 1910, Chapter 373, 36 Stats. 604.

9. In that said Court held that before the delivery of the coal in question there was an oral agreement between the said parties that the said libellant should have a maritime lien on the vessels belonging to the Atlantic Phosphate & Oil Corporation for coal de-
393 livered to that corporation and used by its vessels.

10. In that said Court held that said libellant had the right to apply the payment of $2,000 made by the Atlantic Phosphate & Oil Corporation to the libellant on August 24, 1914, to its unsecured open account for coal and in such a way as not to reduce the claim made in said libel for a maritime lien.

11. In that said Court held that no credit should be given or allowed for the payment of said sum of $2,000 made by the Atlantic Phosphate & Oil Corporation to the Libellant on August 24, 1914, either by prorata reduction or by the extinguishment of the claim for a maritime lien on the vessel libelled in said cause or on other vessels libelled in those causes which were consolidated with and tried at the same time as the above entitled libel.

12. In that said Court after the entry of a final decree in said case, ordered that said cause be reopened for the production of further testimony.

13. In that said Court after the entry of a final decree in said case allowed the testimony of Charles E. Horton to be given and ordered the same to be added to the evidence in the case.

14. In that said Court after the entry of a final decree in said case ordered that said final decree be amended by eliminating therefrom all reference to the 20% reduction ordered by said Court in its opinion filed on the 29th day of January A. D. 1917, from the amounts shown to have been consumed from Promised Land
394 by said Steamer and that said amended decree be for the full amount shown to be due to the respective vessels by the evidence before the Court at the time of the hearing of said cause without any deduction on account of any coal on hand at Promised Land when the first of said four cargoes was delivered there.

15. In that said Court entered its amended final decree on November 1, 1917, in accordance with said orders.

16. In that said Court held that said libellant was entitled to a maritime lien on said vessel in the sum of $1,928.44, together with costs taxed at $48.75, or a total sum of $1,977.19.

17. In that the said Court failed to pronounce in favor of said claimant and to dismiss said libel with costs to the said claimant.

Wherefore, the Claimant prays that the said amended final decree be reversed.

GARDNER, PIRCE & THORNLEY,
WILLIAM H. THORNLEY,
Proctors for Claimants.

Bond to Party on Appeal.

(Filed in Admr. #1329.)

This bond is identical with that printed in record on appeal of Admr. #1334, except as to title of case involved, which with such change is hereby incorporated by reference under stipulation infra.

395 *Citation on Appeal.*

(Filed in Admr. #1329.)

United States Circuit Court of Appeals for the First Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Benjamin Marchant et als., are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree,

entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island this ninth day of November, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge for and on behalf of the said Company, due and lawful service of the within citation.

FRANK HEALY.

396 *Stipulation as to Filing of Certain Papers.*

(Filed in Admr. #1329.)

It is stipulated by and between said parties that the papers and the record in the above entitled cause show that the decrees, the claimant's objections thereto, the petition for appeal and other appeal papers therein were all duly filed by the respective parties within such times as was extended by stipulation and order of said court.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

397 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled action that the evidence for libellant, for claimant, and for libellant in rebuttal; stipulations on behalf of libellant and of claimant, libellant's exhibits, claimant's exhibits; the two written opinions filed by said Court; and the evidence for libellant in support of its motion to reopen said case for the taking of further testimony, which are set forth in full in the record on appeal of that cause numbered Admiralty 1359 and entitled "Piedmont & Georges Creek Coal Company vs. the Fishing Steamers Walter Adams, Alaska, Arizona, George Curtiss, Montauk, Quickstep and Ranger" with which this case was consolidated by order of said Court (appearing supra in this record) shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

398 *Stipulation as to Record on Appeal.*

(Filed in Admr. #1329.)

It is hereby stipulated and agreed by and between the Proctors for the respective parties in the above entitled cause that Libellant's Stipulation for Costs, Claim of Receivers, Monition, Order to Consolidate, Warrant of Delivery, Claimant's Objections to Draft Decree and Bond on Appeal, which are set forth in full in the record on appeal of that cause numbered Admr. 1334 and entitled "Benjamin Marchant et al., vs. Fishing Steamer Herbert N. Edwards, with which this case was consolidated by order of said Court shall be incorporated into this record by reference and with the same force and effect as if set forth in full in this record on appeal, with the exception however that the number and name of this case be substituted for the number and name of said case against Fishing Steamer Herbert N. Edwards.

GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.
FRANK HEALY, *Proctors for Libellant.*

399 *Agreement as to the Record on Appeal.*

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

It is hereby agreed that the foregoing testimony, pleadings, opinions and other documents, shall constitute the record on appeal in the above entitled cases and need not be certified by the Clerk of the District Court except as an agreed record.

FRANK HEALY,
Proctor for Libellant.
GARDNER, PIRCE & THORNLEY,
Proctors for Claimant.

400 *Order.*

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

In the above entitled cause, both parties by their respective proctors agreeing thereto, it is

Ordered, that the record annexed hereto shall constitute the record on appeal, and that the Clerk shall certify it as an appeal record without examining it, and without charge, except as may be lawfully made for the certificate itself.

Entered as order of Court December 14, 1917.
THOMAS HOPE, *Clerk.*

Enter:
Dec. 14, 1917.
ARTHUR L. BROWN, *J.*

Clerk's Certificate.

(Filed in Consolidated Cause #1359 and Admr. Causes Numbered 1334, 1333, 1336, 1327 and 1329.)

I, Thomas Hope, Clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is the record agreed upon by the parties in the above entitled action as a record of the District Court.

In testimony whereof, I have caused the seal of the said Court to be affixed in the City of Providence, this 14th day of December, A. D. 1917.

THOMAS HOPE, *Clerk.*

401 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Piedmont & Georges Creek Coal Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of December next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein W. Otis Payne et als. are the original libellants and the said Piedmont & Georges Creek Coal Company are the intervening libellants, and the Seaboard Fisheries Company, Inc., is the appellant, and you, the said Piedmont & Georges Creek Coal Company, are the appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, Judge of the District Court of the United States for the District of Rhode Island, this ninth day of November in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR L. BROWN,
United States District Judge.

November 17, 1917.

I, the undersigned, as proctor for the within named Piedmont & Georges Creek Coal Company, do hereby acknowledge, for and on behalf of the said company, due and lawful service of the within citation.

FRANK HEALY.

Order Extending Time for Filing of Transcript of Record on Appeal.

[Filed in Circuit Court of Appeals December 15, 1917.]

In the above-entitled case it is hereby ordered that the time for the filing of the transcript of record on appeal in the Circuit
402 Court of Appeals be and the same is hereby extended to December 15, 1917.

By the Court (Brown, J.), December 7, 1917.

THOMAS HOPE, *Clerk.*

Enter December 7, 1917.
ARTHUR L. BROWN, *J.*

Assented to.
FRANK HEALY,
Proctor for Libellant.

403 United States Circuit Court of Appeals for the First Circuit,
October Term, 1917.

No. 1327.

Fishing Steamers WALTER ADAMS et al.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

No. 1328.

Fishing Steamer HERBERT N. EDWARDS.

SAME

v.

SAME.

No. 1329.

Fishing Steamer ROLLIN E. MASON.

SAME

v.

SAME.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

SAME

v.

SAME.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

SAME

v.

SAME.

No. 1332.

Fishing Steamer AMAGANSETT.

SAME

v.

SAME.

Appeals from the District Court of the United States for the District of Rhode Island.

Before Dodge, Bingham, and Johnson, JJ.

Opinion of the Court.

June 21, 1918.

DODGE, *J.:*

Maritime liens, asserted by the libellant company upon each of the vessels proceeded against in these cases, for amounts of coal alleged to have been furnished to them respectively during the fishing season of 1914, have been sustained as valid by the Dis-
404 trict Court. The claimant appeals from the decrees, contending that upon the facts proved the libellant acquired no maritime lien upon either of said vessels.

There is little or no dispute as to the material facts. They are for the most part sufficiently set forth in the opinion below. The William B. Murray et al., 240 F. R. 147.

The libellant had no dealings regarding the furnishing of coal with either of the vessels libelled, through their officers in command; nor did any of its dealings with their owner regarding the coal it

claims to have furnished relate to coal required at the time for use by either of said vessels, or to either of said vessels as distinguished from the other vessels included with them in a "fleet" of nineteen fishing steamers in all. Its dealings were only with the then owner of the entire fleet, referred to in the opinion below as the "Oil Corporation," which corporation was employing the fleet, in connection with lands and fishing factories belonging to it at Promised Land, on Long Island, in New York, and at Tiverton, Rhode Island, in a manufacturing business. At the two above-named places the vessels of the fleet delivered fish taken on their successive trips, and also coaled for further trips.

The libellant did not deliver any of the coal it claims to have furnished, directly to the vessels libelled, or either of them; nor does it appear to have delivered any of said coal to the Oil Corporation directly, either at Promised Land or at Tiverton. The coal for which it claims liens came to those places in five different shipments, on various dates in May, June and July, 1914. Four of said shipments were delivered, as the opinion below states, at Promised Land, and one at Tiverton. But all the shipments came to those places on barges which had taken the coal on board at the libellant's loading piers near New York City, where the libellant had agreed to deliver it under a previous general agreement with the Oil Corporation so to deliver such coal as said corporation might require for its needs at Promised Land and at Tiverton, during said season, at agreed prices per ton; the delivery of all the coal being F. O. B. at said pier. The above facts regarding said shipments from the libellant's piers, not referred to in the opinion below, but appearing from the invoices and bills of lading relating to the shipments, indicate that
405 delivery of all the coal so shipped to the Oil Corporation took place at the libellant's loading piers. In view of them, we do not think it can be taken as proved that the libellant delivered any of said coal to the Oil Corporation under the above agreement for delivery, either at Promised Land or at Tiverton. But even if such delivery can be taken as proved, there is no question that the coal included in the five cargoes was put on board the barges by the libellant at its New York piers without any understanding that it, or any definite part of it, was for either of the vessels libelled, or for any particular vessel of the fleet, or that all of it was for the vessels then composing the fleet. The first shipment, indeed, was expressly identified on the invoice as "coal for factory." There can be no doubt that, according to the understanding between the parties, some at least of the coal to be furnished would be needed in the factories, and the Oil Corporation was left, so far as any understanding with the libellant was concerned, to use the coal either in the factories or on the vessels of its fleet as it might subsequently desire.

If the libellant can be said to have delivered any of the coal comprised in these five shipments to the Oil Corporation, at Promised Land or at Tiverton, there was still no understanding as to the coal so delivered, or any definite part of it, that it was for either of the vessels libelled, or for all of them, or even for all the vessels in the fleet as distinguished from the factories; and except that the

coal was understood to be for use in its business as carried on at those places, its ultimate disposition was left as above for determination by the Oil Corporation subsequently to the making of the agreement regarding coal for the season, and subsequently to both its shipments and its delivery.

The five shipments were all charged by the libellant on its books to the Oil Corporation, without any entries charging any of it either to a specific vessel, or to specific vessels, or to the fleet; and they were billed to the Oil Corporation only, without any reference to vessels or fleet. When the first shipment to Promised Land arrived there, it was put into the Oil Corporation bins, which already contained 1068 tons previously received and paid for by the Oil Corpo-
406 ration in full, under the same general agreement. The remaining three shipments received at Promised Land were dumped on the same pile, and from the entire pile the Oil Corporation used coal as needed, for all the vessels in its fleet of nineteen, and also for running its boiler plant on shore at that place. The shipment received at Tiverton went upon the Oil Corporation's pier there, and was used by it in part for ten of the vessels belonging to its fleet as they needed it, and in part by its boiler plant on shore at that place. Among the vessels which took on board and used some part of the coal included in the shipments were the five vessels proceeded against in this case.

There was evidence tending to show how much coal each of said vessels took on board at Promised Land out of the entire stock at that place, and how much at Tiverton out of the entire stock there, after the five shipments had been received as above. The District Court determined the quantity of coal subsequently received and used by each vessel libelled, out of the coal included in said shipments, as follows: The respective quantities found to have been taken on board at Promised Land by each of said vessels respectively were reduced by an estimated proportion, being the proportion which the 1068 tons in the pile at Promised Land, before the first of the above shipments to that place had been added thereto, bore to the whole quantity in said pile; after the coal included in said shipments had been added. To the quantities so ascertained were then added the quantities found to have been taken on board by each vessel libelled, at Tiverton.

Whether the libellant has shown itself entitled to maritime liens upon these vessels respectively for the respective amounts of coal thus ascertained is a question to be determined, not between it and the owner at the time of said vessels, but between the libellant and the present claimant, who had nothing to do with the libellant's agreement with the Oil Corporation, nor with the ordering, receiving or using the coal shipped under it as above, and who did not become owner of said vessels until after they had received and used the coal. The Oil Corporation mortgaged its property in 1913, including these vessels, to secure its bonds. A bill to foreclose the
407 mortgage so given had been filed in the same District Court wherein the decree now appealed from was rendered. There was a decree of foreclosure upon said bill, ordering the sale of the

mortgaged property; and under it these and the other vessels of the fleet were sold April 24, 1915, before this suit was begun. The claimant was the purchaser of these vessels at the sale. The present libels were afterwards filed against them on June 16, 1915. While the sale did not divest valid maritime liens to which the vessels were subject when sold, the question of the validity of the liens asserted in this suit is, so far as the present claim is concerned, a question as to the validity of secret or unrecorded encumbrances.

As to the libellant's original agreement with the Oil Corporation to furnish it with coal for the season, it was never completely embodied in any written document. It appeared that when this agreement was made there was a balance due for coal from the previous year, and that the Oil Corporation was known to be largely indebted, in view whereof there was an understanding between the parties to the effect that the latter should have a maritime lien for the coal it was to furnish, not for the above five shipments specifically,—and upon the Oil Corporation's entire fleet or such vessels belonging to it as might thereafter use any of the coal,—not upon any specific vessels included in it. The District Court found it to have been understood by the parties "that the law would afford a lien upon the vessels for the coal and that the Coal Company would thus have security," and also understood that "a large part of the coal furnished was to be used by vessels of the fleet."

A contract cannot afford the necessary basis for a maritime lien unless it is maritime in its nature, so as to be cognizable in admiralty; and it is not enough that the contract is maritime as to some of its provisions, it must be maritime in its entirety. It was long ago said by high authority—

> "In cases of a mixed nature it is not a sufficient foundation for admiralty jurisdiction that there are involved some ingredients of a maritime nature. The substance of the whole contract must be maritime."

108 Story, J., in Plummer v. Webb, 4 Mason, 380. The principle stated has since been repeatedly recognized and acted on. The following District Court decisions may be cited: Diefenthal v. Hamburg, etc., 46 F. R. 397, 399; Richard v. Hogarth, 84 F. R. 684; The James T. Furber, 129 F. R. 811; 157 F. R. 128; Berton v. Tietjens etc. Co., 219 F. R. 719; also the following decisions on appeal: Harvey v. Henry, 86 F. R. 657; Pacific etc. Co. v. Leatham etc. Co., 151 F. R. 440; The Pennsylvania, 154 F. R. 9.

Nor, even if the libellant's agreement with the Oil Corporation had covered no coal for factory use and had been an agreement only for the furnishing of such coal as the 19 vessels of its fleet might thereafter require during the season, could it be regarded as maritime in character. It did not "begin and end in the necessities of a particular vessel for a particular vessel for her own voyage" as a contract for supplies must, in order to be within admiralty jurisdiction. "Where owners group together a large number of vessels and make annual contracts for their supplies, the admiralty jurisdiction does not include them because the reason for it does not." The Oil

Corporation could not therefore have sued the libellant in admiralty for failure to supply coal according to the agreement, nor could it have sued in admiralty for a refusal to take and pay for coal offered under the agreement. Diefenthal v. Hamburg, etc., 46 F. R. 397, already cited; S. S. Overdale Co. v. Turner, 206 F. R. 339.

Part of the agreement is said to have been that the libellant should have the security of a maritime lien for such coal as it should furnish thereunder. It may well be doubted whether, in a contract non-maritime in character as above, a maritime lien for supplies later to be furnished could ever be created by express stipulation therein on the part of the vessel owner. It is at any rate clear, as pointed out in the opinion of the District Court, that no such security could be created upon the entire fleet, irrespective of what use should be made of the coal, nor upon particular vessels of the fleet for coal furnished to the other vessels. Astor etc. Co. v. E. V. White etc. Co., 241 F. R. 57. Whenever maritime liens created by express contract with the owner have been sustained, the agreed liens
409 have been upon vessels or freights specified at the time of the agreement, and for supplies or advances then agreed to be furnished to them specifically upon such specific credit, and afterward so furnished. The evidence as to the precise agreement made in this case as to liens upon the Oil Corporation vessels is far from definite, and by no means such as would be sufficient in any event for the establishment of a maritime lien by express consent of the owner. The general manager of the Oil Corporation testified that, as he understood, a maritime lien on the entire fleet should be security upon which the libellant was to furnish coal, but to such an agreement no effect can be allowed, as has been stated. We regard the evidence as establishing, at most, such an understanding as the District Court found to have existed,—that "the law would afford a lien upon the vessels for the coal."—that is, according to the libellant's present contention, upon each vessel afterwards supplied, for the coal supplied to her.

Under the circumstances of this case, the libellant has a lien upon any one of these vessels if it has proved that it "furnished" the coal received by her as above "to the vessel," upon the order of her owner, within the meaning of the Act of June 23, 1910 (36 Stats. 604); but not in the absence of such proof. This, under the circumstances shown, we consider the only lien which the law afforded it.

Assuming that the libellant can be said, in the case of any one of the vessels, to have "furnished to" her the coal she received, in the statutory sense, the furnishing may be said to have been "upon the order of her owner." But the question is, whether any such assumption can be made, in view of the facts that after turning over to the owner of the fleet the entire quantity of coal shipped as above, the libellant left it wholly to the owner to select, out of the fleet, the particular vessels by which the coal was to be received and used; and to determine the particular part of said quantity to be put on board each such vessel, as well as the particular time for putting it on board.

The Federal statute enlarged the maritime law as it had previously stood, by permitting the acquirement of maritime liens upon vessels, for supplies furnished to them, as well in their home ports
410 as in foreign ports. This it accomplished by providing that proof of furnishing such supplies to a vessel should be sufficient proof of credit given to the vessel therefor,—definite proof of credit so given having always previously been held necessary, whenever what had been furnished had been furnished at the port of the owner's residence. We see no reason to believe that the statute intends the same result to be accomplished without proof that the supplies for which a lien is claimed have been furnished directly to the vessel, and not merely furnished to the owner without definite and distinct reference to her.

When the statute was passed in 1910, no principles of the maritime law of the United States were more fully recognized or more firmly adhered to than those set forth in the familiar statements by the Supreme Court in Vandewater v. Mills (The Yankee Blade), 19 How. 382, 389, to the effect that maritime liens are stricti juris, because they may operate to the prejudice of general creditors and purchasers without notice, and that they cannot be extended by construction, analogy or inference.

It was also well settled, prior to the statute, that credit given by a material man to a vessel was not proved unless supplies or material intended for her were shown to have been furnished directly to her. While actual delivery by him on board, or (in the case of materials) actual incorporation in the vessel was not necessary under all circumstances to constitute such direct furnishing by him, mere delivery to the owner without special reference to the particular vessel, was not accepted as sufficient proof; there must have been at least such delivery to the vessel sought to be charged with a maritime lien as would have bound her under a contract of affreightment for transportation of the goods by her. See The James H. Prentice, 36 F. R. 777, 781, and cases cited; The Vigilancia, 58 F. R. 698, 700, and cases cited; The Cimbria, 156 F. R. 378.

In like manner, it had been held necessary, in order to establish an admiralty lien upon a vessel for maritime services rendered to her, that the services should appear to have been rendered to the particular vessel sought to be charged. Proof that they had
411 been rendered under a contract with her owner for future services to a number of his vessels indiscriminately, at an agreed price per day or for the season, though including the particular vessel, was not accepted as sufficient for the purpose. The Newport, 114 F. R. 713; The Alligator, 161 F. R. 37. In the latter case it was said by the Court of Appeals for the Third Circuit,—

"A lien does not and should not attach for a supposed credit given to a vessel, unless the services or supplies are clearly shown to have been rendered or furnished to the particular vessel to which credit is given."

The Statute of 1910 has not, in our opinion, made proof that the supplies for which a maritime lien is claimed were furnished directly to the particular vessel by the material man any less necessary than

before, nor does it afford any ground for attaching any meaning other than that previously recognized to the expression "furnished to a vessel." The decisions made since the statute was passed have insisted upon the same necessity and have given the same effect to the words quoted. See The Geisha, The Bethulia, 200 F. R. 865, 876; Astor etc. Co. v. White etc. Co., 241 F. R. 47; The Cora P. White, 243 F. R. 246

The statute with which we are here concerned must thus be regarded as differing materially in its terms from State statutes purporting to give liens,—which may or may not be maritime liens,—for supplies or materials furnished "for" or "on account of" a vessel, or for materials furnished "in or about, or during, her construction," like the Maine statute considered in The Kiersage, 2 Curtis, 421, or the Massachusetts, Michigan and Virginia statutes referred to in The Geisha, 200 F. R. 865, 867, 868. In Berwind-White etc. Co. v. Metropolitan etc. Co., 166 F. R. 784; 173 F. R. 271, referred to in the opinion below, the Court of Appeals for this Circuit sustained liens claimed for machinery which had gone into each of two vessels respectively while being constructed, under a single contract to furnish machinery for both, but which did not appropriate any of it specifically to either. The liens so sustained, however, re-
412 lating as they did to construction, were not maritime liens; nor were they asserted in an admiralty court. See 173 F. R. 480. The decision sustaining them, made in an equity suit, gave effect to a New Jersey statute with reference to which the machinery had been contracted for, which statute purported to secure by a lien any debt contracted by the owner of a vessel "on account of" any materials furnished "for or towards the building, repairing, furnishing or equipping such vessel." 166 F. R. 785. But the agreement here relied on must be taken to have had reference to the terms of the above Federal statute, and the parties to have understood that "the law would afford a lien" upon any one vessel of the Oil Corporation fleet for such coal only as might be "furnished to" her according to the accepted meaning of that expression. The question here is whether compliance with the terms of that statute is proved, not whether any underlying equity can be found which might support a lien in the libellant's favor.

We are unable to believe, in view of all the above that the provisions of the statute can properly be understood in the less restricted sense accepted by the District Court, according to which, although the libellant had obtained no lien upon any vessel in the Oil Corporation's fleet when it parted with its coal by delivery to said corporation, liens in its favor might afterward be created by the Oil Corporation's subsequent acts in selecting particular vessels out of said fleet to receive portions of the coal which had been so delivered.

Where specific supplies or materials have been furnished to the ner upon a distinct understanding that they were for a specified vessel and the owner has, after delivery to him, appropriated them to the vessel so designated between the parties, they have been held to have been furnished to her in the sense of the statute; and mari-

time liens for them under it have been sustained. Ely v. Murray etc. Co., 200 F. R. 368; The Yankee, 233 F. R. 919.

The Court of Appeals for the Third Circuit was careful, in the case last cited, to limit its decision as follows:—

"We hold that a material man may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages
413–14 from their point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it."

Further than this no court had gone, in interpreting the provisions of the statute here in question, prior to the decision here appealed from. We are obliged to regard the construction adopted by the court below as one not intended by the statute.

We therefore hold that the District Court erred in sustaining the liens asserted, upon the evidence before it. This conclusion renders it unnecessary to consider certain other errors assigned.

The decree of the District Court is reversed, and the cases are remanded to that court, with instructions to dismiss the libels. The appellant in each case recovers its costs of appeal.

415 On April 9 and 10, A. D. 1918, these causes came on to be heard together and were fully heard by the court, Honorable Frederic Dodge, Honorable George H. Bingham and Honorable Charles F. Johnson, Circuit Judges, sitting.

Thereafter, to wit, on June 21, A. D. 1918, the opinion of the court (page 403) was announced, and the following Final Decree was entered in each case:—

Final Decree.

June 21, 1918.

This case came on to be heard April 9 and 10, 1918, upon the transcript of record of the District Court of the United States for the District of Rhode Island, and was argued by counsel.

On consideration whereof it is now, to wit, June 21, 1918, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed, and the case is remanded to that court with instructions to dismiss the libel. The appellant recovers its costs of appeal.

By the Court:

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on August 21, 1918, the following Motion to Stay Mandate was filed in each case:—

Motion to Stay Mandate.

[Filed August 21, 1918.]

In the above-entitled cause the Piedmont & Georges Creek Coal Company hereby move that mandate in the above-entitled cause may be stayed pending an application by said appellee for a writ of certiorari to the Supreme Court of the United States.

PIEDMONT & GEORGES CREEK
COAL COMPANY,
By FRANK HEALY, *Proctor for Appellee.*

Providence, Rhode Island, August 21, 1918.

On the same day, to wit, August 21, 1918, the following Order of Court was entered in each case:—

416 *Order of Court.*

August 21, 1918.

Upon motion of appellee setting forth that it proposes to file a petition in the Supreme Court for a writ of certiorari, it is ordered that the mandate in this case be, and the same hereby is, stayed until further order of court upon the condition that said petition is duly filed and presented within the time prescribed by the rules and practice of the Supreme Court of the United States.

By the Court;

ARTHUR I. CHARRON, *Clerk.*

Clerk's Certificate.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 416, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including August 21, 1918, in the causes in said court numbered and entitled.

No. 1327. Fishing Steamer Walter Adams et al. Seaboard Fisheries Company, Inc., Appellant, v. Piedmont & Georges Creek Coal Company, Appellee.

No. 1328. Fishing Steamer Herbert N. Edwards. Same v. Same.

No. 1329. Fishing Steamer Rollin E. Mason. Same v. Same.

No. 1330. Fishing Steamer William B. Murray. Same v. Same.

No. 1331. Fishing Steamer Martin J. Marran. Same v. Same.

No. 1332. Fishing Steamer Amagansett. Same v. Same.

417 In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the

First Circuit, at Boston, in said First Circuit, this twenty-eighth day of August, A. D. 1918.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk.*

418 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the First Circuit, Greeting:

Being informed that there is now pending before you cases wherein Seaboard Fisheries Company, Inc., is appellant, and Piedmont & Georges Creek Coal Company is appellee, Nos. 1327, 1328, 1329, 1330, 1331, and 1332, which suits were removed into the said Circuit Court of Appeals by virtue of appeals from the District Court of the United States for the District of Rhode Island, and we, being willing for certain reasons that the said causes and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do
419 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said causes, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirty-first day of October, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

420 *Return on Writ of Certiorari.*

United States Circuit Court of Appeals for the First Circuit.

And now the Judges of the United States Circuit Court of Appeals for the First Circuit make return of this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States No. 675 of October Term, 1918, wherein this writ of certiorari issued, "that the certified transcript of record in the above suits, now on file in the office of the Clerk of the Supreme Court of the United States, be taken as a return to the writ of certiorari herein, dated October 31, 1918."

In testimony whereof, I, Arthur I. Charron, Clerk of said United States Circuit Court of Appeals for the First Circuit hereto set my

hand and affix the seal of said court at Boston, in said First Circuit, this thirteenth day of November, A. D. 1918.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk.*

421 United States Circuit Court of Appeals for the First Circuit, October Term, 1917.

No. 1327.

Fishing Steamers WALTER ADAMS et al.

SEABOARD FISHERIES COMPANY, INC., Appellant,

v.

PIEDMONT & GEORGES CREEK COAL COMPANY, Appellee.

No. 1328.

Fishing Steamer HERBERT N. EDWARDS.

Same

v.

Same.

No. 1329.

Fishing Steamer ROLLIN E. MASON.

Same

v.

Same.

No. 1330.

Fishing Steamer WILLIAM B. MURRAY.

Same

v.

Same.

No. 1331.

Fishing Steamer MARTIN J. MARRAN.

Same

v.

Same.

No. 1332.

Fishing Steamer AMAGANSETT.

Same

v.

Same.

Stipulation.

(Filed November 13, 1918.)

It is hereby consented that the certified transcript of record in the above suits, now on file in the office of the Clerk of the Supreme Court of the United States, be taken as a return to the writ of certiorari herein, dated October 31, 1918.

November 7, 1918.

GARDNER, PIRCE & THORNLEY,
Proctors for Seaboard Fisheries Co., Inc., Appellant.

FRANK HEALY,
KIRLIN, WOOLSEY & HICKOX,
Proctors for Piedmont & Georges Creek Coal Company, Appellee.

JOHN M. WOOLSEY,
Of Counsel.

A true copy.
Attest:

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON, *Clerk.*

422 [Endorsed:] File No. 26,761. Supreme Court of the United States, October Term, 1918. No. 675. Piedmont & Georges Creek Coal Company vs. Seaboard Fisheries Company, Claimant etc. Writ of Certiorari.

423 [Endorsed:] File No. 26,761. Supreme Court U. S., October Term, 1918. Term No. 675. Piedmont & Georges Creek Coal Company, Petitioner, vs. Seaboard Fisheries Company, Claimant etc. Writ of certiorari and return. Filed November 15, 1918.